

**MISCELLANEOUS PRIVATE RELIEF, FEE EXEMPTION, LAND CON-
VEYANCES, BOUNDARY ADJUSTMENT, AND AMENDMENTS TO
THE VOLUNTEERS IN THE PARKS ACT OF 1979**

HEARING
BEFORE THE
SUBCOMMITTEE ON
PUBLIC LANDS AND RESERVED WATER
OF THE
COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
NINETY-EIGHTH CONGRESS
FIRST SESSION

ON

S. 482

A BILL TO PROVIDE RELIEF FOR CERTAIN DESERT LAND ENTRYMEN IN THE STATE OF IDAHO

S. 508

A BILL TO EXEMPT ENTITIES RECEIVING FINANCIAL ASSISTANCE FROM THE RURAL ELECTRIFICA-
TION ADMINISTRATION FROM FEES UNDER THE FEDERAL LAND POLICY AND MANAGEMENT
ACT OF 1976

S. 598

A BILL TO AUTHORIZE A LAND CONVEYANCE FROM THE DEPARTMENT OF AGRICULTURE TO
PAYSON, ARIZONA

S. 600

A BILL TO AMEND PUBLIC LAW 95-244

S. 620

A BILL TO AMEND PUBLIC LAW 89-668, RELATING TO THE PICTURED ROCKS NATIONAL LAKE-
SHORE, TO REQUIRE THE DEVELOPMENT OF A LOCAL LAND USE PLAN AND ZONING REGULA-
TIONS FOR THE INLAND BUFFER ZONE

S. 807

A BILL TO AMEND THE BOUNDARIES OF THE CUMBERLAND ISLAND NATIONAL SEASHORE

S. 864

A BILL TO AMEND THE VOLUNTEERS IN THE PARKS ACT OF 1969, AND FOR OTHER PURPOSES

S. 1160

A BILL TO AUTHORIZE DOUGLAS COUNTY OF THE STATE OF NEVADA TO TRANSFER CERTAIN
LAND TO A PRIVATE OWNER

JUNE 27, 1983

Printed for the use of the
Committee on Energy and Natural Resources

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1983

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CONTENTS

	Page
S. 482	3
S. 508	7
S. 598	9
S. 600	12
S. 620	14
S. 807	21
S. 864	22
S. 1160	23

STATEMENTS

Andrews, Hon. Mark, a U.S. Senator from the State of North Dakota	36
Axelsen, Milo, Caldwell, Idaho	204
Berger, Abigail Carson, legal counsel for the Northern Gila County Historical Society, Phoenix, Ariz.	239
Burdick, Hon. Quentin N., a U.S. Senator from the State of North Dakota	37
Curd, David W., teacher, Grand Canyon Unified School District No. 4, Grand Canyon, Ariz.	243
DeConcini, Hon. Dennis, a U.S. Senator from the State of Arizona	193
Dickenson, Russell E., Director, National Park Service, Department of the Interior on:	
S. 864	57
S. 807	60
S. 600	63
S. 620	73
Engdahl, Lynn H., Special Assistant to the Director, Bureau of Land Management, Department of the Interior on:	
S. 482	26
S. 508	42
S. 1160	45
Goldwater, Hon. Barry, a U.S. Senator from the State of Arizona	203
Laxalt, Hon. Paul, a U.S. Senator from the State of Nevada	39
Levin, Hon. Carl, a U.S. Senator from the State of Michigan	70
MacCleery, Douglas W., Deputy Assistant Secretary, Natural Resources and Environment, Department of Agriculture	48
McClure, Hon. James A., a U.S. Senator from the State of Idaho	213
Morris, G. Patrick, Boise, Idaho	209
Pressler, Hon. Larry, a U.S. Senator from the State of South Dakota	34
Riegle, Hon. Donald W., Jr., a U.S. Senator from the State of Michigan	68
Ringert, William F., attorney, Boise, Idaho	77
Robinson, Charles A. Jr., deputy general manager, National Rural Electric Cooperative Association; accompanied by A. Harold Peterson, executive director and counsel, National REA Telephone Association; and Andrew Brown, legislative counsel, National Telephone Cooperative Association	214
Wallop, Hon. Malcolm, a U.S. Senator from the State of Wyoming	1

APPENDIX

Additional material submitted for the record	247
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**MISCELLANEOUS PRIVATE RELIEF, FEE EX-
EMPTION, LAND CONVEYANCES, BOUNDARY
ADJUSTMENTS AND AMENDMENTS TO THE
VOLUNTEERS IN THE PARKS ACT OF 1979**

MONDAY, JUNE 27, 1983

**U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, D.C.**

The subcommittee met, pursuant to notice, at 10:03 a.m., in room SD-366, Dirksen Office Building, Hon. Malcolm Wallop, presiding.

Present: Senators Wallop and McClure.

Also present: Tony Bevinetto, professional staff member; and Thomas B. Williams, professional staff member for the minority.

**OPENING STATEMENT OF HON. MALCOLM WALLOP, A U.S.
SENATOR FROM THE STATE OF WYOMING**

Senator WALLOP. Good morning.

The Subcommittee on Public Lands and Reserved Water will hear testimony today on the following bills: S. 482, which provides relief for certain desert land entrymen in the State of Idaho; S. 508, to exempt entities receiving financial assistance from the Rural Electrification Administration from fees under the Federal Land Policy and Management Act of 1976.

S. 620, to amend Public Law 89-668 relating to the Pictured Rocks National Lakeshore, to require the development of a local land-use plan, zoning regulations for the inland buffer zone.

S. 600, to amend Public Law 95-244; S. 598, to authorize a land conveyance from the Department of Agriculture to Payson, Ariz.; S. 807, to amend the boundaries of the Cumberland Island National Seashore; S. 864, to amend the Volunteers in the Parks Act of 1969 and for other purposes; and S. 1160, to authorize Douglas County for the State of Nevada to transfer certain land of a private owner.

Without objection, I will place a copy of all the bills in the hearing record and the record will remain open for 2 weeks after today.

We have a number of bills to consider today and I propose that we hear from Senators as they appear and ask Mr. Engdahl, Director Dickenson and Mr. MacCleery come to the table and present the administration's testimony in the following order:

Mr. Engdahl on S. 482, S. 508 and S. 1160. Mr. MacCleery can chime in on S. 508 and S. 598 and Mr. Dickenson will clean up on the chimes—[laughter]—about S. 600, S. 620, S. 807 and S. 864.

I ask all the witnesses to summarize their written statements in their oral testimony. The written statements will be printed in the record along with the chimes. [Laughter.]

It must have been a rather exotic weekend.

Mr. Engdahl.

[The texts of the bills follow:]

98TH CONGRESS
1ST SESSION

S. 482

To provide relief for certain desert land entrymen in the State of Idaho.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 15 (legislative day, FEBRUARY 14), 1983

Mr. McCLURE (for himself and Mr. SYMMS) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To provide relief for certain desert land entrymen in the State of Idaho.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That:

4 SECTION 1. The Congress finds that certain developed
5 and productive desert land entries in Idaho made under the
6 Desert Land Act of March 3, 1877, as amended (43 U.S.C.
7 321 et seq.), generally known as the Black Mesa and the
8 Sailor Creek Projects, and specifically identified in section 2
9 of this Act by Bureau of Land Management serial number,
10 have been canceled under the provisions of section 329 of
11 title 43, United States Code, as a result of the retroactive

1 application of an interpretation of the holding limitation of
 2 section 329 of title 43, United States Code; the Congress
 3 further finds that the retroactive application of the interpreta-
 4 tion of the holding limitation was made approximately two
 5 years after final development and proof of and final payment
 6 for these desert land entries made several years after the
 7 entries were allowed, without giving the entrymen any op-
 8 portunity to comply with the new interpretation; the Con-
 9 gress further finds that cancellation of the desert land entries
 10 under those circumstances was harsh, unfair, and results in
 11 forfeiture to the government of the developed entries, and
 12 that such cancellation was not necessary for the proper oper-
 13 ation and administration of the Desert Land Act; and the
 14 Congress further finds that the entrymen have fulfilled the
 15 requirements of the Desert Land Act in all respects other
 16 than the holding limitation and that the entrymen and the
 17 assignees hereinafter named are entitled to have their entries
 18 reinstated in order that they may comply with the new inter-
 19 pretation of the Desert Land Act and qualify for issuance of
 20 patents.

21 SEC. 2. The names of the entrymen and assignees, and
 22 the serial numbers of the desert land entries, to which this
 23 Act applies, are as follows:

24 A. Sailor Creek Project Desert Entries:

Entryman	BLM designated
G. Patrick Morris.....	serial number
	Idaho 013820

Joan E. Roth.....	Idaho 013905
Elsie L. Neeley.....	Idaho 013906
Lyle D. Roth.....	Idaho 013907
Vera M. Noble (now Baltzor).....	Idaho 014126
Charlene S. Baltzor.....	Idaho 014128
George R. Baltzor.....	Idaho 014129
John E. Morris (deceased).....	Idaho 014130
Juanita M. Morris.....	Idaho 014249
Nellie Mae Morris (deceased).....	Idaho 014250
Milo Axelsen.....	Idaho 014251
Peggy Axelsen.....	Idaho 014252

1 B. Black Mesa Project Desert Entries:

Entryman	BLM designated serial number
Golden Grigg.....	Idaho 013917
LeFawn Grigg (now Ottley).....	Idaho 013918
Fred Baines.....	Idaho 013919
Merthan G. Ellis, assignee of Otis H. Williams.....	Idaho 013920
Vonnie E. Ellis, assignee of Kathryn Williams.....	Idaho 013921
Lovell Taylor.....	Idaho 013922
William A. Anderson.....	Idaho 013923
Saragene Smith.....	Idaho 013924
Thomas M. Anderson.....	Idaho 013925
Bonnie Anderson.....	Idaho 013926
Charles L. Taylor.....	Idaho 013927
Darlene Baines (deceased).....	Idaho 013928
Lu Ann Hogg.....	Idaho 013933
Paul R. Hogg.....	Idaho 013934

2 SEC. 3. The desert land entries identified in section 2 of
3 this Act are hereby reinstated, and the entrymen and above-
4 named assignees, or the heirs or devisees of any deceased
5 entrymen or above-named assignee, are allowed six (6)
6 months from the effective date of this Act to rescind any
7 agreements they might now be party to which are prohibited
8 by the Secretary of the Interior's current interpretation of
9 section 329 of title 43, United States Code, and are allowed
10 until December 31 in the third year following the effective
11 date of this Act to resubmit final proof of reclamation and
12 cultivation of the land in accordance with the provisions of

1 section 329 of title 43, United States Code. Upon making
2 satisfactory final proof, patents shall issue to the entrymen
3 and the above-named assignees or to their heirs or devisees,
4 without further payment, final payment having been made by
5 the named entrymen in 1964 and 1965.

6 SEC. 4. Notwithstanding any other provision of the
7 desert land laws, the property right prior to issuance of
8 patent to the lands of any entryman or his assignee identified
9 in section 2 of this Act, or the heirs or devisees of any such
10 entryman or assignee, whose entry is reinstated in accord-
11 ance with section 3 of this Act, shall be a personal right,
12 inheritable but not assignable: *Provided, however,* That any
13 such entry may be mortgaged in the manner permitted by the
14 regulations issued by the Secretary of the Interior for the
15 purpose of securing repayment of moneys borrowed for devel-
16 opment of the entry or for farm operating or crop production
17 expenses.

18 SEC. 5. This Act is limited in scope and applies only to
19 those certain desert land entries in Idaho identified above in
20 section 2 of this Act. The purpose of this Act is to provide
21 relief unique to the entrymen and assignees listed above in
22 section 2 of this Act, and this Act does not amend or inter-
23 pret or provide any change in interpretation of any provision
24 of section 329 of title 43, United States Code, or any other
25 section of the Desert Land Act.



98TH CONGRESS
1ST SESSION

S. 508

To exempt entities receiving financial assistance from the Rural Electrification Administration from fees under the Federal Land Policy and Management Act of 1976.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 17 (legislative day, FEBRUARY 14), 1983

Mr. LAXALT (for himself, Mr. HECHT, Mr. ANDREWS, Mr. PRESSLER, and Mr. BURDICK) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To exempt entities receiving financial assistance from the Rural Electrification Administration from fees under the Federal Land Policy and Management Act of 1976.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 504(g) of the Federal Land Policy and Manage-
4 ment Act of 1976 is amended by—

5 (1) inserting “(1)” after “(g)”; and

6 (2) adding at the end thereof the following new
7 paragraph:

8 “(2) The provisions of paragraph (1) shall not apply to
9 entities which have received financial assistance under the

8

2

1 Rural Electrification Act of 1936, as amended (7 U.S.C.
2 901-9056).".

○

98TH CONGRESS
1ST SESSION

S. 598

To authorize a land conveyance from the Department of Agriculture to Payson,
Arizona.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 24 (legislative day, FEBRUARY 23), 1983

Mr. DECONCINI (for himself and Mr. GOLDWATER) introduced the following bill;
which was read twice and referred to the Committee on Energy and Natural
Resources

A BILL

To authorize a land conveyance from the Department of
Agriculture to Payson, Arizona.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That, notwithstanding any other provision of law, the Secre-
4 tary of Agriculture is authorized to transfer, without consid-
5 eration, to the town of Payson, Arizona, the following de-
6 scribed parcel:

7 A parcel of land entirely within the south half of
8 the southeast quarter of the southeast quarter of the
9 southeast quarter, of section 5, township 10 north,
10 range 10 east, Gila and Salt River base and meridian,

1 Payson, Gila County, Arizona, more particularly de-
2 scribed as follows: commencing at the common corner
3 of sections 4, 5, 8, and 9, township 10 north, range 10
4 east, Gila and Salt River base and meridian;

5 thence north 89 degrees 56 minutes west, along
6 the south line of section 5, a distance of 164.47 feet to
7 the true point of beginning;

8 thence continuing north 89 degrees 56 minutes
9 west, along the south line of section 5, a distance of
10 337.13 feet;

11 thence north 13 degrees 33 minutes 08 seconds
12 east, a distance of 223.16 feet, to a point on the south
13 right-of-way line of West Main Street;

14 thence south 74 degrees 10 minutes 23 seconds
15 east, along the south right-of-way line of West Main
16 Street, a distance of 145.02 feet;

17 thence south 43 degrees 09 minutes east, along
18 the south right-of-way line of West Main Street, a dis-
19 tance of 243.72 feet;

20 thence north 89 degrees 56 minutes west, along
21 the south right-of-way line of West Main Street, a dis-
22 tance of 21.36 feet, to the true point of beginning.

23 The above described parcel of land contains 1.10
24 acres, more or less.

1 SEC. 2. (a) The property described in the first section
2 shall be used for the preservation and display of articles of
3 historical significance. If the property is not used for histori-
4 cal purposes, title to such property shall revert to the United
5 States.

6 (b) Subject to the use restrictions provided in subsection
7 (a), the town of Payson, Arizona, may provide for the admin-
8 istration of the property by the Northern Gila County His-
9 torical Society.

○

98TH CONGRESS
1ST SESSION

S. 600

To amend Public Law 95-244.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 24 (legislative day, FEBRUARY 23), 1983

Mr. DECONCINI (for himself and Mr. GOLDWATER) introduced the following bill;
which was read twice and referred to the Committee on Labor and Human
Resources

MAY 5 (legislative day, MAY 2), 1983

Committee discharged; ordered referred to the Committee on Energy and Natural
Resources

A BILL

To amend Public Law 95-244.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) the first section of the Act entitled, "An Act to
4 authorize the Secretary of the Interior to make payments to
5 appropriate school districts to assist in providing educational
6 facilities and services for persons living within or near the
7 Grand Canyon National Park on nontaxable Federal lands,
8 and for other purposes," approved March 14, 1978 (92 Stat.
9 154), as amended (20 U.S.C. note following section 238), is

1 amended by striking out the matter after the enacting clause
2 through the word "payments" the first time it appears and
3 inserting in lieu thereof the following: "That (a) notwith-
4 standing any other provision of law providing for the disposi-
5 tion of revenues described in this subsection, and under such
6 terms and conditions as may be prescribed by the Secretary
7 of the Interior, payments may be made, in advance or other-
8 wise, from any revenues received by the United States from
9 visitors to Grand Canyon National Park,".

10 (b) Subsection (c) of the first section of such Act is
11 amended to read as follows:

12 "(c) For the purpose of this Act, the Secretary of the
13 Treasury is authorized and directed to maintain in a special
14 fund a portion of the park revenues, sufficient for the mainte-
15 nance and operation of federally owned buildings, facilities,
16 equipment, real property, and grounds used for school pur-
17 poses, and for all applicable current Federal, State, and local
18 fire life safety, and building codes, based upon estimates to be
19 submitted by the Secretary of the Interior, and to expend
20 amounts deposited in the special funds under this subsection
21 upon certification by the Secretary of the Interior."

○

98TH CONGRESS
1ST SESSION

S. 620

To amend Public Law 89-668, relating to the Pictured Rocks National Lakeshore, to require the development of a local land use plan and zoning regulations for the inland buffer zone.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 28 (legislative day, FEBRUARY 23), 1983

Mr. LEVIN (for himself and Mr. RIEGLE) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To amend Public Law 89-668, relating to the Pictured Rocks National Lakeshore, to require the development of a local land use plan and zoning regulations for the inland buffer zone.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That subsection (a) of section 8 of the Act entitled "An Act
4 to establish in the State of Michigan the Pictured Rocks Na-
5 tional Lakeshore, and for other purposes" approved October
6 15, 1966 (Public Law 89-668; 80 Stat. 922), is amended by
7 adding at the end thereof the following: "The Secretary is
8 further authorized to acquire by transfer from any Federal

1 agency, or by donation, property within the Grand Marais,
2 Michigan, and Munising, Michigan, corporate limits lying out-
3 side the boundary described in section 2 for the purpose of
4 providing visitor information and administrative centers for
5 the National Lakeshore.”.

6 SEC. 2. Section 10 of such Act is amended to read as
7 follows:

8 “SEC. 10. (a) The Secretary shall be prohibited from
9 acquiring by condemnation any (1) improved property within
10 the inland buffer zone, or (2) any other property used in a
11 manner consistent with zoning regulations as may be adopted
12 by local units of government pursuant to section 12.

13 “(b) As used in this Act, the term ‘improved property’
14 shall mean any one-family dwelling on which construction
15 was begun before September 1, 1982, together with so much
16 of the land on which the dwelling is situated (such land being
17 in the same ownership as the dwelling) as shall be reasonably
18 necessary for the enjoyment of the dwelling.”.

19 SEC. 3. Section 12 of such Act is amended to read as
20 follows:

21 “SEC. 12. (a) Local units of government having authori-
22 ty to establish zoning regulations for the regulation of land
23 uses within their boundaries and having lands within the
24 inland buffer zone within their boundaries may, within one
25 year of the date of enactment of this section, jointly develop a

1 land use plan and zoning regulations for the regulation and
2 management of land uses within the inland buffer zone.

3 “(b) The land use plan and zoning regulations shall set
4 forth specific policies for use of the inland buffer zone which
5 are compatible with the intent and purpose of the Pictured
6 Rocks general management plan, as prepared pursuant to
7 section 6 and the purposes of this Act and with the following
8 objectives:

9 “(1) define land uses for the stabilization and pro-
10 tection of the existing character and uses of lands,
11 waters, and other properties within such zone, the
12 preservation of the existing shoreline and lakes, and
13 the protection of watersheds and streams;

14 “(2) establish standards for the encouragement of
15 the private development and operation of visitor serv-
16 ice facilities including overnight lodging, camping, and
17 similar facilities in appropriate locations;

18 “(3) provide for the maximum economic utilization
19 of the renewable resources through sustained yield
20 timber management and other resource management;

21 “(4) maintenance and improvement of roads which
22 provide access to and from the Pictured Rocks Nation-
23 al Lakeshore; and

1 “(5) provide for the establishment of standards for
2 improved residential properties and other appropriate
3 land uses.

4 “(c) Zoning regulations developed by local units of gov-
5 ernment pursuant to this section shall provide for, among
6 other things, the granting or denial of variances to such regu-
7 lations and the continuance of land uses in existence prior to
8 September 1, 1982, and shall, to the maximum extent possi-
9 ble, be consistent with State zoning laws and existing local
10 zoning regulations.

11 “(d) The land use plan and zoning regulations adopted
12 pursuant to this section shall be subject to the approval of the
13 Secretary of the Interior, pursuant to the following proce-
14 dure:

15 “(1) Within thirty days of completion of a land
16 use plan and zoning regulations pursuant to this sec-
17 tion, the local units of government shall hold a public
18 hearing to present such plan and regulations for public
19 review and comment. After the public hearing, the
20 local units of government shall, within thirty days,
21 make any changes or modifications in the land use plan
22 and zoning regulations deemed necessary in light of the
23 public comments received, and shall submit the land
24 use plan and zoning regulations to the Secretary of the
25 Interior for review and approval.

1 “(2) After receiving a plan and regulations sub-
2 mitted pursuant to paragraph (1), the Secretary shall
3 have one hundred eighty days in which to review the
4 plan and submit in writing to the local governments his
5 approval or his specific objections and reasons for such
6 objections regarding all or any part of the land use
7 plan and the zoning regulations. If the Secretary ob-
8 jects, he shall propose alternatives in accordance with
9 his objections. The Secretary may hold a public hear-
10 ing on the land use plan and zoning regulations as part
11 of this review.

12 “(3) Upon disapproval by the Secretary of all or
13 any part of the land use plan or the zoning ordinance,
14 the local units of government shall have sixty days to
15 make any changes or modifications necessary to bring
16 the plan or the zoning regulations into conformance
17 with the written objections of the Secretary. The local
18 units may request a meeting with the Secretary or his
19 designee to negotiate what changes or modifications
20 need to be made in the land use plan or zoning regula-
21 tions. If such a meeting is requested, the local units of
22 government shall have an additional thirty days from
23 the date of the meeting to make any changes and
24 modifications necessary for approval.

1 “(e) Upon final approval of a land use plan and the
2 zoning regulations by the Secretary, the land use plan and
3 the zoning regulations shall be formally adopted, adminis-
4 tered, and enforced by the local units of government pursuant
5 to applicable State law.

6 “(f) In the event the Secretary determines under appli-
7 cable State law that a land use within the inland buffer zone
8 is inconsistent with the zoning regulations as may be adopted
9 pursuant to this section, the Secretary shall petition the ap-
10 propriate local zoning body to take remedial action pursuant
11 to the provisions of such zoning regulations before the Secre-
12 tary may initiate condemnation proceedings against such
13 property.

14 “(g) Zoning regulations adopted by local units of gov-
15 ernment pursuant to this section may be changed or amended
16 at any time in the same manner, and subject to the same
17 procedure, as adoption of the original ordinance.”.

18 SEC. 4. Section 14 of such Act is amended to read as
19 follows:

20 “SEC. 14. (a) There are hereby authorized to be appro-
21 priated not more than \$6,873,000 for the acquisition of lands
22 and interests in land in connection with, and not more than
23 \$26,780,800 for development of, the Pictured Rocks Nation-
24 al Lakeshore.

1 “(b) There is authorized to be appropriated up to
2 \$350,000 annually for the maintenance and improvement of
3 primary access roads within the boundary of the National
4 Lakeshore as described in section 2 without regard to wheth-
5 er title to such road rights-of-way is in the United States,
6 provided that such annual appropriations are authorized for a
7 period not to exceed five years, beginning October 1, 1983.”.

○

98TH CONGRESS
1ST SESSION

S. 807

To amend the boundaries of the Cumberland Island National Seashore.

IN THE SENATE OF THE UNITED STATES

MARCH 15 (legislative day, MARCH 14), 1983

Mr. NUNN (for himself and Mr. MATTINGLY) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To amend the boundaries of the Cumberland Island National Seashore.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 1 of the Act of October 23, 1972 (86 Stat.
4 1066), is amended by striking out "numbered CUIS
5 40,000D" and substituting "numbered CUIS 40,000E".

○

98TH CONGRESS
1ST SESSION

S. 864

To amend the Volunteers in the Parks Act of 1969, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 18 (legislative day, MARCH 14), 1983

Mr. McCLURE (by request) introduced the following bill; which was read twice
and referred to the Committee on Energy and Natural Resources

A BILL

To amend the Volunteers in the Parks Act of 1969, and for
other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 4 of the Volunteers in the Parks Act of 1969
4 (84 Stat. 472; 16 U.S.C. 18j) is amended by changing the
5 comma after the word "Act" to a period and striking out the
6 remainder of the section.

○

98TH CONGRESS
1ST SESSION

S. 1160

To authorize Douglas County of the State of Nevada to transfer certain land to a private owner.

IN THE SENATE OF THE UNITED STATES

APRIL 27 (legislative day, APRIL 26), 1983

Mr. LAXALT introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To authorize Douglas County of the State of Nevada to transfer certain land to a private owner.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That notwithstanding the Act entitled "An Act to authorize
4 acquisition or use of public lands by States, counties, or mu-
5 nicipalities for recreational purposes", approved June 14,
6 1926 (43 U.S.C. 869 et seq.), or the provisions of any patent
7 granted pursuant to such Act by the United States concern-
8 ing the real property described in section 2, the United States
9 releases any reversionary interest in such real property, and

1 Douglas County of the State of Nevada is authorized to
2 transfer such real property to any private person.

3 SEC. 2. The real property authorized to be transferred
4 in the first section is the lot, piece or parcel of land lying
5 along and adjoining the Virginia and Truckee Railroad right-
6 of-way in the Town of Minden, Nevada, described as follows:
7 Beginning at a point on the northerly side of the State High-
8 way right-of-way line, north 63 degrees 25 minutes west,
9 146 feet from the southeast corner of the wool warehouse lot,
10 said point of beginning further described as bearing north 58
11 degrees 58 minutes 40 seconds west, 855.32 feet from the
12 established Town Monument of the said Town of Minden;
13 thence north 63 degrees 25 minutes west, along the High-
14 way right-of-way line 60 feet to a point; thence north 26
15 degrees 35 minutes east, 55 feet, to a point; thence south 63
16 degrees 25 minutes east, parallel with the railroad spur
17 track, 60 feet to a point; thence south 26 degrees 35 minutes
18 west, 55 feet, to the point of beginning; all within section 29,
19 township 13 north, range 20 east, Mount Diablo Meridian,
20 Nevada, containing 3,300 square feet.

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**STATEMENT OF LYNN H. ENGDAHL, SPECIAL ASSISTANT TO THE
DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF
THE INTERIOR**

Mr. ENGDAHL. I am Lynn Engdahl, Special Assistant to the Director of the Bureau of Land Management. I appreciate the opportunity to summarize these and we will ask that the full statement be printed in the record.

Concerning the first bill you requested us to testify on, Senate bill 482, I believe I can summarize it in a single sentence. From a legal standpoint, the Department of the Interior opposes S. 482.

I am not a country lawyer, but I believe that the Senate of course could change the law.

Senator WALLOP. Excuse me?

Mr. ENGDAHL. I said I believe that the Senate could at any time or Congress could change the law, but from a legal standpoint we have to oppose it.

[The prepared statement of Mr. Engdahl on S. 482 follows:]

JUN 27 1983

STATEMENT OF LYNN ENGDAHL, SPECIAL ASSISTANT TO THE DIRECTOR, BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE, ON S. 482, A BILL "TO PROVIDE RELIEF FOR CERTAIN DESERT LAND ENTRYMEN IN THE STATE OF IDAHO."

I appreciate the opportunity to appear before the subcommittee this morning to discuss the Department of the Interior's views on S. 482.

S. 482 contains six Congressional findings regarding two farming projects, known as Black Mesa and Sailor Creek, which were developed under the provisions of the Desert Land Act of March 3, 1877, as amended.

S. 482 would reinstate 26 desert land entries specified in the bill and would allow the entrymen, or their heirs or assigns, within six months from the effective date of S. 482, to rescind any agreements to which they might now be a party that are prohibited by the Secretary's interpretation of 43 U.S.C. 329. Those individuals would also be allowed until December 31 in the third year following the effective date of S. 482 to resubmit final proof of reclamation and cultivation of the land in accordance with the applicable provisions of the Desert Land Act. The bill requires that upon making final proof patents would issue to the named parties without further payment.

S. 482 specifies that prior to issuance of a patent, the property right to the lands of any person named in the bill whose entry is reinstated shall be a personal right, inheritable but not assignable. However such entries could be mortgaged to secure repayment of funds borrowed for development of the entry or for farm operation or crop production expenses.

S. 482 states that it is limited in scope and applies only to the identified desert land entries, that the purpose of the Act is to provide relief unique to the named entrymen and assignees, and that the Act does not amend, interpret or provide any change in interpretation of any provision of 43 U.S.C. 329 or any other section of the Desert Land Act.

From a legal standpoint, the Department of the Interior opposes S. 482.

Both the Black Mesa and Sailor Creek Projects involve desert land development arrangements that were found by the Interior Board of Land Appeals to violate the Desert Land Act. The Board's determinations were taken to the Courts by the entrymen and were affirmed by the United States Court of Appeals for the Ninth Circuit.

Both cases involve situations where a number of individuals, under the provisions of the Desert Land Act, filed for entry to contiguous 320-acre parcels of land in Idaho but, through various contractual arrangements, allowed a single entity to possess, control and enjoy substantially all of the benefits of the desert land entries. The arrangements were found to have violated the provision of the Desert Land Act that allows a person to enter no more than 320 acres of desert land to reclaim it. The Act provides that an entry may not be assigned to or for the benefit of any corporation

or association, and that no person or association other than the entryman may prior to issuance of the patent, hold by assignment or otherwise more than 320 acres. The Act also specifies that entries violating the Act shall be cancelled and the lands and money invested shall be forfeited.

In the Sailor Creek case, twelve individuals filed declarations in 1963 under the Desert Land Act upon contiguous 320-acre parcels comprising approximately 3,790 acres of undeveloped desert land adjacent to the Snake River in Elmore County, Idaho. The declarants had previously obtained water permits from the State of Idaho. The twelve entrymen then assigned the water permits to the Sailor Creek Land and Water Company, which then assigned the rights to the Sailor Creek Water Co. Thereafter, the entrymen made lease and contractual commitments to Sailor Creek Water Co., (Sailor Creek) the source of their financing, under which Sailor Creek would advance the capital necessary to bring water to the lands. Sailor Creek advanced the money as loans to the entrymen, who in turn agreed to pay for irrigation water and mortgaged their interests in the entries to secure the future contract payments. Eleven of the entrymen also leased their entries to the twelfth entryman, who in turn caused all twelve entries to be leased to Sailor Creek. The entrymen remained responsible for the payment of taxes on the land, but all costs of planting, together with all decisions regarding the selection, growing and harvesting of crops, were the responsibility of Sailor Creek. The lessees retained all revenue generated from the farming operation but were obligated to pay the lessors an annual rental. Sailor Creek thereby became both the mortgagee of the anticipated title and the lessee/developer of the possessory interests in the lands. The entrymen filed final proof papers in 1964.

In 1966, after becoming aware of the totality of the arrangement between the entrymen and Sailor Creek, the Bureau of Land Management filed contests against the entries alleging that the prohibition in the Desert Land Act against holdings exceeding 320 acres had been violated, and seeking cancellation and forfeiture of the entries. In 1978 the United States Court of Appeals for the Ninth Circuit affirmed the previous findings of the Interior Board of Land Appeals that Sailor Creek's possessory and legal interests under the lease-mortgage agreements constituted a "holding of the desert land by assignment or otherwise" that was prohibited by the Desert Land Act. The Court also found that the Government was not estopped from cancelling the entries, because "having failed to inform the Government of the totality of their arrangement, appellees cannot be heard to argue that the Government's failure to warn them of their illegality supports the invocation of estoppel." The entrymen's petition to the United States Supreme Court for a writ of certiorari to the Ninth Circuit Court of Appeals was denied on November 29, 1982.

The Black Mesa case involves desert 14 land entries covering 4,458 contiguous acres of land in Elmore County, Idaho. Early in 1963, two individuals discovered the land, had it surveyed and blocked into 320-acre tracts, and arranged for 14 members of their families to file for entry under the Desert Land Act. Thereafter Grigg and Anderson Farms (G&A), a partnership comprised of six individuals including the two people who had discovered the land, was responsible for pursuing the entry applications, developing and reclaiming the lands, determining the amount of compensation the entrymen would receive,

providing working capital and making all marketing and development decisions. The entrymen filed their final proof on August 6, 1965. In July 1967, the Government sued for cancellation of the 14 entries and forfeiture of the investments for violation of the 320-acre limitation of the Desert Land Act.

In April 1975, the Interior Board of Land Appeals found that through various arrangements between the entrymen and G&A, the entrymen had surrendered possession, control and substantially all benefits of the entries to the partnership, that as a result of the arrangements, the partnership was the "holder" of the entries in violation of the 320-acre limitation; and that the involved desert land entries, having been made for the use and benefit of others with an intent to circumvent the provisions of the desert land laws, were fraudulent. Both the United States District Court for the District of Idaho, and the United States Court of Appeals for the Ninth Circuit affirmed the Board's decision.

In their presentations before both IBLA and the courts, the entrymen placed considerable weight on two factors in arguing that the Government should be estopped from cancelling the entries. They first argued that the cancellation of their entries resulted from the retroactive application of a new interpretation of the term "holding" and second, that since Government officials were aware of but did not advise the entrymen of the illegality of the lease arrangements, the Government should have been estopped from cancelling the entries.

The Court solidly rejected both arguments. As to the retroactive application of the interpretation of the term "holding," the IBLA found, and the Ninth Circuit agreed, that the Government cannot be estopped from attacking illegality. The fact is that the arrangements were illegal and that the Desert Land Act authorizes the Secretary to contest desert entries for such illegality.

As to the second argument, IBLA found in both cases that the Government officials had not been advised of all the relevant facts. In the Sailor Creek case, IBLA noted that "one can scarcely expect the Government to caution parties against illegal acts when such acts are not brought to the Government's attention until after their consummation." In the Black Mesa case it was found that the entrymen had fraudulently induced BLM to allow the entries.

If the Government had been fully apprised of the true intent of the parties involved in the Black Mesa and Sailor Creek cases, the farms would not have been allowed to proceed to full development. Upon learning of the real nature of the development plans, the Government proceeded with the contest actions authorized by the Act. However, we are informed that, before the Government initiated these contest actions, the corporations had reclaimed the lands, spent millions of dollars to support the operations and the farms were producing crops.

The courts have found that, in taking action to cancel the entries, the BLM acted as required by the provisions of the Desert Land Act. One of the main purposes of the Act was to insure that desert lands were made available to individuals for settlement, as opposed to development by

firms. As pointed out by IBLA in the Black Mesa case, "It is clear that Congress was concerned that land actually be available to bona fide settlers. There are two basic methods by which that Congressional will could have been thwarted. First, a large syndicate could hold desert lands in the name of dummy entrymen and eventually acquire absolute title to the lands. Second, the syndicate could hold desert lands in the name of dummy entrymen without ever receiving title, but at the same time using the land for its own benefit and preventing bona fide settlers from making entry." It is interesting to note that amendments to the Desert Land Act in 1890 and 1891 were intended to prevent such situations from occurring. The 1890 amendment established the 320-acre limitation, while the 1891 amendment provided that one person could not hold by assignment or otherwise, prior to the issuance of patent, more than 320 acres of public land. Thus, the Black Mesa and Sailor Creek situations clearly violate the Act.

Unlike the innocent assignees of the Indian Hills case, who were by the Act of June 25, 1910 allowed to complete their entries, the entrymen in the Black Mesa and Sailor Creek cases were not unaware of the arrangements that were found to be illegal. Section 5 of S. 482 says that this bill is to provide relief unique to the entrymen. The most unique attribute of the entrymen is that they violated the law, a fact found by the courts.

I would also point out that the 320-acre limitation is not the only provision of the Desert Land Act that was violated. For example, IBLA found that the Sailor Creek scheme constituted an "assignment for the benefit of any corporation or association," and as such was prohibited by 43 U.S.C. 324.

In summary, S. 482 would legitimize violations of the Desert Land Act, and therefore, on that basis, we would oppose its enactment.

I will be pleased to respond to any questions that you may have.

Mr. ENGDAHL. On Senate bill 508 which relates to rural electrical entities, I would like to read two germane paragraphs.

After careful and thorough consideration of the comments, we concluded that there is no equitable basis for granting rural electric or telephone cooperatives free access and use of public lands.

With respect to cost reimbursement, under direction of the Secretary of the Interior, the Bureau of Land Management is reviewing its cost reimbursement procedures with a view toward collecting the cost of processing and monitoring right of ways and those who benefit from the public land. Without reimbursement for the cost of processing applications for right-of-ways and monitoring them, the Bureau of Land Management might have difficulty performing these functions under reduced budget. The same may be true of other land managing agencies.

S. 508 has one other serious defect. The Rural Electrification Act of 1936 allows financial assistance to private corporations and private individuals which provide rural electrification.

If a private corporation or private individual has received financial assistance under the REA, S. 508 would exempt such entities from rights-of-way rental charges and rights-of-way processing and monitoring costs.

We are opposed to granting exemption to private entities.

Concerning the last——

Senator WALLOP. Let me just say that Senators Pressler, Andrews, Burdick, and Laxalt will have statements for the record on S. 508.

[The prepared statements of Senators Pressler, Andrews, Burdick and Laxalt, and Mr. Engdahl on S. 508 follow:]

STATEMENT OF SENATOR PRESSLER
before the
SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER
of the
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
on
S. 508
JUNE 27, 1983

MR. CHAIRMAN, I WOULD FIRST LIKE TO THANK YOU FOR HOLDING HEARINGS ON S. 508 AND FOR ALLOWING ME TO EXPRESS MY SUPPORT FOR THE LEGISLATION. I HAVE COSPONSORED S. 508 AND ALSO CO-SPONSORED SIMILAR LEGISLATION LAST YEAR.

AS YOU ARE WELL AWARE, MANY RURAL ELECTRIC AND TELEPHONE COOPERATIVES IN WESTERN STATES SUCH AS SOUTH DAKOTA AND WYOMING HAVE LINES CROSSING FEDERAL LAND. MOST OF THESE LINES HAVE BEEN IN PLACE FOR YEARS AND MANY ARE UNDERGROUND, SO THERE IS LITTLE EFFECT ON THE FEDERAL LANDS. MANY OF THESE LINES WERE BUILT BECAUSE THE RURAL ELECTRIC OR TELEPHONE COOPERATIVES WERE REQUIRED TO SERVE AN AREA AND THERE WERE NO ALTERNATIVE MEANS TO DO SO. THE FEDERAL GOVERNMENT ALLOWED THE COOPERATIVES TO CROSS THE LAND, BUT NOW THE FEDERAL GOVERNMENT HAS CHANGED ITS POLICY. AN EASEMENT FEE IS BEING ASSESSED FOR LINES CROSSING FEDERAL LAND.

MR. CHAIRMAN, I SUPPORT THE EFFORTS OF THE FEDERAL GOVERNMENT IN TRYING TO GET A FAIR PRICE FOR THE USE OF FEDERAL LAND,

- 2 -

BUT IMPOSING EASEMENT FEES ON RURAL ELECTRIC AND TELEPHONE COOPERATIVES IS A CONTRADICTIONARY POLICY. THE FEDERAL GOVERNMENT PROVIDES SUBSIDIZED FINANCING TO RURAL ELECTRIC AND TELEPHONE COOPERATIVES, AND AT THE SAME TIME, THE GOVERNMENT IS REQUIRING THEM TO PAY FOR LINES CROSSING FEDERAL LAND. THIS IS LIKE ROBBING PETER TO PAY PAUL.

IN MOST INSTANCES, THE FEDERAL GOVERNMENT IS ALREADY BEING PAID FOR THE USE OF THE FEDERAL LANDS. RANCHERS PAY GRAZING FEES FOR THE USE OF THE SAME LAND THE POWER OR TELEPHONE LINES CROSS. WITH THIS NEW POLICY, THE FEDERAL GOVERNMENT IS BEING PAID TWICE FOR THE USE OF THE SAME LAND.

THE RURAL ELECTRIC AND TELEPHONE COOPERATIVES THAT SERVE AREAS CONTAINING FEDERAL LAND GENERALLY HAVE LARGE SERVICE AREAS WITH FEW CONSUMERS. IN MANY INSTANCES, THERE ARE FEWER THAN TWO CONSUMERS PER MILE, AND OFTEN, THE HOOKUPS ARE ONLY WELLS TO WATER LIVESTOCK. THE RESIDENTS IN THESE AREAS ALREADY PAY HIGHER UTILITY RATES THAN THE AVERAGE CONSUMER AND CANNOT AFFORD TO PAY HIGHER RATES. THE ASSESSMENT OF NEW EASEMENT FEES ON FEDERAL LAND FOR THESE COOPERATIVES WILL ONLY INCREASE UTILITY RATES.

IN CONCLUSION, I WANT TO EXPRESS MY SUPPORT FOR S. 508 AND URGE YOUR COMMITTEE TO TAKE EARLY FAVORABLE ACTION ON THIS MEASURE.

THANKS AGAIN FOR ALLOWING ME TO PRESENT MY VIEWS ON THIS IMPORTANT MATTER.

STATEMENT FOR THE RECORD
OF SENATOR ANDREWS
SUPPORTING S. 508

Mr. Chairman: I wish to offer my strong support for S. 508 and to encourage my colleagues to join with me in securing its adoption.

The reasons for enacting S. 508 are clear and compelling. This bill does not represent a new Congressional foray into uncharted territory. Rather, it simply re-states in concrete terms that which I, for one, had felt was a long-established principle: the organizations providing rural America with electric and telephone service through the aid of REA reduced-interest loans are providing a benefit to the public. That was the opinion of Congress when the rural electrification program was first adopted, and I believe it remains Congress' opinion today.

The recent decisions of the Bureau of Land Management and the Forest Service to impose new, burdensome right-of-way fees on REA-supported utilities provide a classic example of the right hand not knowing (or even worse, perhaps not caring) what the left hand is doing. The federal government, through the Rural Electrification Administration, subsidizes electric and telephone utility construction in sparsely populated rural areas by providing reduced-interest loans. The consumers in these areas probably would not otherwise have access to such service. In some cases the federal government itself is one of the consumers benefiting from the services these utilities provide and would, of course, be adversely affected by rate increases which may be expected as a result of these new charges. For the federal government to provide financial assistance through one agency only to have part of that assistance extracted by other agencies through the imposition of these new right-of-way fees is absolutely ridiculous.

Although these new fees, by anyone's reckoning, will have a miniscule, if not a negative, impact on reducing the burgeoning federal deficit, their potential for inflicting severe damage on the very utilities the REA program was designed to help should not be underestimated. Their direct effect will be, in many instances, to render economically unfeasible planned construction necessary to fulfill the needs of potential consumers not yet served and to drive up costs for those already enjoying the benefits of REA-supported services.

These adverse direct effects pale, however, when compared to the devastating potential that the imposition of right-of-way fees by the federal government may have in terms of setting a precedent. If the States, municipalities, and private landowners who now generally provide right-of-way easements at no cost were to follow the federal government's lead on this issue, the impact on rural electric and telephone cooperatives would be devastating. In some cases, it could well be fatal to their efforts to provide quality service at reasonable rates to the thousands of rural Americans who rely on them.

In conclusion, Mr. Chairman, I wish to recommend this legislation to my colleagues. It simply recognizes the beneficial service the REA-supported cooperatives provide for rural America and returns us to a policy which, until quite recently, had been followed by agencies of the federal government for nearly half a century.

Testimony by Senator Quentin N. Burdick
Subcommittee on Public Lands and Reserved Water
Senate Committee on Energy and Natural Resources

June 27, 1983, hearing on
S. 508, to exempt entities receiving financial assistance
from the Rural Electrification Administration

Mr. Chairman, thank you for this opportunity to present my views in support of S. 508, a bill to exempt entities receiving financial assistance from the Rural Electrification Administration from fees under the Federal Land Policy and Management Act of 1976. I am a cosponsor of S. 508 and urge its passage.

Title V of the Federal Land Policy and Management Act expressly gives the Administration the discretion to waive the requirement for rights-of-way fees across public lands where the public good is served. Obviously, rural electric and telephone cooperatives provide essential services. The rates charged for those services are clearly important to the lives and livelihoods of people living in our rural areas. Rural people already pay taxes to administer our public lands. Charging those same people rights-of-way fees for locating electric and telephone distribution facilities amounts to nothing more than increasing their electric and telephone bills for no good purpose.

Further, the assessment of rights-of-way fees across public lands hits our western states particularly hard. Most of the public lands are in the West. At the same time, our electric and telephone cooperatives typically have very

few consumers per mile of line as compared to their investor-owned utility counterparts. Rates are already high, and any additional fees will hit those people hard.

The discretionary waiver authority in Title V of the Federal Land Policy and Management Act puts Administrations in a position they need not be in. Because the assessment of rights-of-way fees for crossing public lands by our electric and telephone cooperatives unfairly affects mostly ratepayers and the economy of western states, and because the collection of those fees will not improve the administration of those public lands, we should pass S. 508.

Thank you, Mr. Chairman.

STATEMENT OF SENATOR PAUL LAXALT ON S. 508 AND S. 1160 TO
THE SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER
JUNE 27, 1983

Mr. Chairman:

I appreciate this opportunity to provide for the Subcommittee my views in support of S. 508. And I want to express my appreciation to the Subcommittee for this early hearing on this measure.

At last count, Mr. Chairman, I am joined on this bill by 17 of my colleagues representing states with entities adversely impacted by the decision of the Bureau of Land Management and the Forest Service to impose rights-of-way fees for access routes over the public lands.

Title V of the Federal Land Policy and Management Act requires payment of a fee for a right of way over the public lands. Such fees are to be at fair market value. However, the Secretary is also explicitly given discretion to waive the requirement where the public good is served.

I support the concept of securing fair market value for the services the government provides. However, as with any policy, there are situations which require a different approach to a general policy. Electric cooperatives and rural telephone companies provide a most important service in the sparsely populated and remote rural areas of the nation, a service specifically authorized and promoted by the Congress over the years. And typically in many cases

Page 2

these entities must cross the public lands to provide this service. These entities also typically have long, expensive powerline requirements and small market areas. The lines constitute a major portion of the overhead of these entities. Imposing additional fees for crossing federal land is not only a burden on the providers but an out of cost increase to the consumer who already pays, on average, 12 percent more than those receiving the service from investor-owned utilities. The government policy of charging these fees is contradictory to the policy set in place by the Congress.

The anti-trust settlement with AT&T may well bring with it an increase in rates for rural telephone customers. Charging right-of-way fees will just add to the burden the rural user may have to carry should the expected rate increase from the AT&T settlement occur.

The rationale of the Department of the Interior for imposing the fee rather than granting the exemption appears to be that since the cooperative, like other entities, raises revenues through service charges and is not tax or donation supported, it should be required to pay the right-of-way charge. I fear, however, that it is not good public policy to place the rural electric and power user under a further rate disadvantage compared to the investor-owned utility counterpart. The rural customer already helps pay

Page 3

for the management of the Federal lands through the taxes he or she pays but will be required to pay again through higher rates.

I urge the Committee to report this bill favorably.

Mr. Chairman, I would like now to comment briefly on S. 1160. This bill provides for the transfer of a small piece of land, comprising 3,300 square feet to adjacent private land owners.

The property is surrounded on all sides by private property. The parcel in question was acquired from by Douglas County from the School District which had acquired the property from the BLM under the Recreation and Public Purposes Act. The property had been used by the School District as a school bus parking lot. The private interests recently donated to the County a parcel of private land needed to complete a roadway to County buildings. The County, which no longer needs the BLM parcel for school bus parking, proposes to trade the parcel for the property acquired from the private owners. The County may not make this donation because of the reversionary impediment in the R and PP Act.

The parcel in question is indistinguishable from the surrounding private property and is used routinely as a parking area. Transfer to the adjacent private property owner will provide just compensation for that owners donation of land to the County and remove from the management burden of the BLM this isolated small tract.

JUN 27 1983

STATEMENT OF LYNN H. ENGDAHL, SPECIAL ASSISTANT TO THE DIRECTOR, BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE, ON S. 508, A BILL "TO EXEMPT ENTITIES RECEIVING FINANCIAL ASSISTANCE FROM THE RURAL ELECTRIFICATION ADMINISTRATION FROM FEES UNDER THE FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976."

I appreciate the opportunity to be here today to discuss S. 508.

S. 508 would amend the Federal Land Policy and Management Act to exempt rural electric and rural telephone cooperatives from payment of rights-of-way rental charges for use of public lands and National Forest System lands and from payment of reimbursable rights-of-way costs for all facilities, including distribution lines, transmission lines and power generation plants.

The question of the exemption that would be authorized by this bill has been given serious consideration on many occasions. In response to requests for public comments during the development of the rights-of-way regulations issued by the Secretary of the Interior and the special use permit regulations issued by the Secretary of Agriculture, many of the comments requested that the regulations provide for free use for particular types of use and for certain types of organizations. Exemption from the requirements to pay for rights-of-way was specifically requested by rural telephone cooperatives and rural electric cooperatives.

After careful and thorough consideration of the comments we concluded that there is no equitable basis for granting rural electric or telephone cooperatives free access and use of the public lands.

The use of public lands and National Forest System lands for commercial purposes should be on the same terms and conditions as similar use of private lands. Allowing free use of Federal lands to some users who serve commercial purposes while charging others, such as investor-owned utilities which also serve rural areas, for similar use would be patently unfair.

The fees for use of the Federal lands are the appraised fair market rental value of the property and are not excessive. All taxpayers, whether they are customers or non-customers, share in the cost of managing the Federal lands. The provisions for payment of annual use fees contained in the Federal Land Policy and Management Act simply provide that those persons or organizations receiving a special benefit from the Federal lands pay for that special benefit rather than requiring that persons who do not receive the special benefit pay for it. For this reason, when the regulation covering rights-of-way was published, it was determined that cooperatives and municipal utilities, whose principal source of revenue is customer charges, will be required to pay the fees. We believe that policy is sound. We do not believe it should be negated by legislation.

With respect to cost reimbursement, at the direction of the Secretary of the Interior, the Bureau of Land Management is reviewing its cost reimbursement procedures with a view toward collecting the cost of processing and monitoring rights-of-way from those who benefit from using the public lands. Without reimbursement for the cost of processing applications for rights-of-way and of monitoring them, the Bureau of Land Management may have difficulty performing those functions under reduced budgets. The same may be true of other land managing agencies.

S. 508 has another serious defect. The Rural Electrification Act of 1936 allows financial assistance to private corporations and private individuals which provide rural electrification. If a private corporation or private individual has received financial assistance under the Rural Electrification Act of 1936, S. 508 would exempt such entities from rights-of-way rental charges and rights-of-way processing and monitoring costs. We are strongly opposed to granting exemption to private entities.

This concludes my statement. I will be pleased to answer questions.

Mr. ENGDAHL. On S. 1160, this is a situation where there is a small piece of land that was granted under the Recreation and Public Purposes Act. The original cost was \$50. The question is: Can it be sold by Douglas County?

We have no objection to conveying the tract through normal administrative means if the fair market value is paid for it. This would be in accordance with section 203 of FLPMA, which provides that sale of public lands shall be made at a price not less than fair market value as determined by the Secretary.

It would also be in conformance with longstanding congressional policy that the United States receive fair market value for conveyance of public land. We feel that there is no justification for legislating a conveyance of this tract without payment of fair market value or for bypassing administrative procedures that already exist for the conveyance of public lands in appropriate cases.

Those are summaries of my three statements.

[The prepared statement of Mr. Engdahl on S. 1160 follows:]

JUN 27 1983

STATEMENT OF LYNN H. ENGDAHL, SPECIAL ASSISTANT TO THE DIRECTOR, BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE, ON S. 1160, A BILL "TO AUTHORIZE DOUGLAS COUNTY OF THE STATE OF NEVADA TO TRANSFER CERTAIN LAND TO A PRIVATE OWNER."

I appreciate the opportunity to be here today to discuss S. 1160.

S. 1160 would release any reversionary interest the United States may have in certain real property in Douglas County, Nevada, and authorize the County to transfer the property to any private person notwithstanding the Act of June 14, 1926, or the provisions of any patent granted pursuant to the Act concerning the real property described in section 2 of the bill.

We are strongly opposed to enactment of S. 1160.

The parcel of land described in section 2 of S. 1160 and another parcel were patented under the Recreation and Public Purposes Act to Douglas County, Nevada on June 10, 1966. The patent specifies that the lands are granted to Douglas County for a vocational school only and that if the patentee does not comply with the plan of development or the plan of management then the terms of the grant can be terminated by the Secretary. The patent further stipulates that the Secretary may, in lieu of forfeiture of title, require the patentee to pay the United States a sum of money based on a formula. In 1982, the Bureau of Land Management approved a change in the use of the parcel. It now can be used for a public safety center; however, the parcel is not being used for a public purpose by the County at this time.

The lands were obtained from the Federal Government for \$50.00, far less than fair market value. We estimate the fair market value of the parcel to be between \$15,000 and \$20,000 today.

The Recreation and Public Purposes Act prohibits the transfer of title to lands received under the Act by the grantee or its successor unless the transferee would be a qualified transferee under the Act. Private persons are not qualified to receive public lands under the Recreation and Public Purposes Act.

Having acquired the property at less than fair market value for a specific public purpose, it would be clearly unfair to allow Douglas County to convey this parcel to a private party. Douglas County should not be allowed to profit by selling the lands to a private party. Enactment of this legislation would create the undesirable precedent of encouraging other recipients of lands under the Recreation and Public Purposes Act to request special legislation. It would negate the purpose of the Recreation and Public Purposes Act.

Disposal of this parcel of land can be more appropriately handled through existing Bureau of Land Management land conveyance authority than through special legislation. Under existing law, the Secretary of the Interior is authorized to convey public lands once the planning requirements of the Federal Land Policy and Management Act have been met. Section 203 of that Act provides for competitive sales of parcels of public lands if certain disposal criteria are met, but also allows the Secretary to sell land without competitive bidding or with modified competitive bidding, in order to recognize equitable considerations or public policies. BLM's Nevada State Office has reported that the tract subject to this bill meets the first criterion in section 203(a)(1) that:



such tract because of its location or other characteristics is difficult and uneconomical to manage as part of the public lands, and is not suitable for management by another Federal department or agency.

The Nevada State Office further reported that disposal of the land would not adversely affect BLM land and resource management programs. The tract in question could be sold by direct sale.

Therefore, we have no objection to conveying the tract through normal administrative means, if fair market value is paid for it. This would be in accordance with section 203 of the Federal Land Policy and Management Act which provides that sales of public lands shall be made at a price not less than fair market value of the lands as determined by the Secretary. It would also be in conformance with long-standing congressional policy that the United States receive fair market value for conveyance of public lands.

There is no justification for legislating a conveyance of this tract without payment of fair market value or for bypassing administrative procedures that already exist for the conveyance of public land in appropriate cases.

This concludes my statement. I will be pleased to answer any questions the subcommittee may have.

Senator WALLOP. Thank you, Mr. Engdahl. I just would say that with regard to S. 508, I suppose from a technical standpoint, you and the administration may be right, but one of the blessings of deregulation in the telephone industry is that it is very unlikely we are going to have rural telephones in a lot of homes that presently have them right now, and if we add any burden to that, you know, the consequences would be appalling.

Traditionally with regards to REA, accesses across public lands, I think we really have not sought to exact and extract the last penny of their cost, as we have not with a lot of other things that take place on public lands.

While I understand the administration's position, I think the administration might understand if we press on.

Mr. ENGDAHL. I think we might well understand.

Senator WALLOP. Thank you very much. Now, Mr. MacCleery, according to the opening statement, you must chime in on S. 508 and S. 598.

STATEMENT OF DOUGLAS W. MacCLEERY, DEPUTY ASSISTANT SECRETARY, NATURAL RESOURCES AND ENVIRONMENT, DEPARTMENT OF AGRICULTURE

Mr. MACCLEERY. Thank you. I appreciate the opportunity to chime in on S. 508. We do support opposing the bill for the same reasons that the Department of the Interior does.

Our policy is based on the principle that those who derive a specific benefit from the use of Federal lands over and above the benefits derived by the general public should be charged a reasonable fee commensurate with that use.

Some electrical coops are involved in commercial activities comparable to those of investor-owned utilities. Providing free use to these cooperatives while charging investor-owned utilities for use of national forest lands would not be equitable.

Our records show that the fees for the use of rights-of-way permits are not large, normally less than \$1,000 per year. We believe the—

Senator WALLOP. Per year per what?

Mr. MACCLEERY. For an individual co-op. Fees paid by nine electrical distribution cooperatives holding permits on national forest lands in Montana amount to about 8 cents per year for each of the 64,000 metered customers.

The range of fees is from 1 cent to 45 cents per customer per year. Fees paid by eight electrical distribution co-ops with permitted rights-of-way on national forest land in Missouri range from—amount to—about 5 cents per year for each of the 21,000 metered customers.

Charging for the use of rights-of-way is not unique to the Federal land managing agencies. Some cooperatives now pay private landowners for the rights-of-way that provide power to commercial entities.

Large landowners such as timber companies quite often require payments for distribution and transmission purposes. Several large timber companies in the northern Rocky Mountains and in the

south are charging rural electrical and telephone cooperatives for rights-of-way access across their lands.

Based on this rationale, we must oppose S. 508. S. 598 would authorize the Secretary of Agriculture to transfer 1.1 acres of land to the town of Payson, Ariz.. We recognize the appropriateness of this conveyance and would have no objection to the legislation if it were amended to require payment of fair market value.

The 1.1 acre tract and other Federal lands adjacent to the town of Payson had earlier been identified as suitable for conveyance to the town under the provisions of the Townsite Act.

This act provides that communities in the 11 contiguous Western States may acquire up to 640 acres of national forest system land for community expansion upon payment of fair market value.

Our view is the proposed use of the site as a museum to be administered by the Northern Gila County Historical Society would be appropriate. However, in keeping with our policy that all conveyances of Federal land should be at fair market value, we urge that the subcommittee amend the legislation to provide for this change.

That concludes my statement. I would be happy to answer any questions.

[The prepared statement of Mr. MacCleery on S. 508 and S. 598 follows:]

STATEMENT OF
DOUGLAS W. MACCLEERY
DEPUTY ASSISTANT SECRETARY,
NATURAL RESOURCES AND ENVIRONMENT
UNITED STATES DEPARTMENT OF AGRICULTURE

Before the
Subcommittee on Public Lands and Reserved Water,
Committee on Energy and Natural Resources,
United States Senate

Concerning S. 508 and S. 598

June 27, 1983

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

We are pleased to join the Subcommittee's discussions of S. 508 and S. 598, two bills which involve the lands of the National Forest System. I would like to discuss each bill separately.

S. 508 -- Exemption from Fees for Use of Rights-of-Way:

S. 508 would exempt rural electric and telephone cooperatives from the payment of fees charged by the Secretary of Agriculture and the Secretary of the Interior for use of rights-of-way across National Forest System lands and public lands administered by the Bureau of Land Management. Section 504(g) of the Federal Land Policy and Management Act of 1976 states that "the holder of a right-of-way shall pay annually in advance the fair market value thereof." It is our belief that granting special exemptions to this authority, as would be done by the bill, would be inequitable to other holders of rights-of-way across Federal lands and to the public at large. Hence, we strongly oppose the bill.

I should remark at the outset that we have a common policy with the Department of the Interior regarding rights-of-way fees. We jointly developed rules and regulations on the subject and apply them consistently between National Forest and public land.

Let me review the development, over many years, of the policies that today require that fair market value fees be assessed for use of rights-of-way on Federal land.

The fee requirement began in the nineteen seventies. Before that, in policy originating in 1938, free use was granted to the REA borrowers. The purpose was to promote a rural development objective of making power and telephone services available to rural areas. However, starting with the passage of the fees and charges provisions of the Independent Offices Appropriation Act of 1952, many policies which allowed free use have been gradually tightened. In 1975, USDA's Office of Audit questioned Forest Service policy in light of the new authorities. The Forest Service, after consultation with the Rural Electrification Administration, concluded that free use could no longer be justified. Emphasis was placed upon collection of fair market value fees and charging recipients for specific benefits that are over and above those received by the general public.

The policy has evolved to the point where, as a matter of equity, we conclude that it is not appropriate to continue to allow free use when the holder of the right-of-way is engaged in a similar business and follows practices comparable to private commercial enterprise, and often competes with other commercial utilities

This policy was supported and expanded by the passage of the Federal Land Policy and Management Act of 1976 (FLPMA), which now provides our current direction. Section 102, setting forth broad congressional policy, declares that the United States should receive fair market value for the use of Federal land and resources. Section 504 applies that policy specifically to rights-of-way. This section also provides discretionary authority to the Secretary to waive part or all the fee for nonprofit associations and corporations not controlled or owned by

profitmaking corporations or business enterprises, if the Secretary finds that such a waiver is equitable and in the public interest. Regulations adopted pursuant to that authority provide that the fee may be reduced or waived when in the public interest. For example, if a right-of-way exclusively serves a Federal facility, a fee is not charged. Fees are also waived for facilities that contribute to the management of the National Forest or other Federal lands, such as an electrical line to wildlife or fishery improvements.

The adoption of the current policy and regulations on fees did not come about without a great deal of public advice. We received valuable discussion and in-depth analysis in 1980 when we promulgated rules on section 504 of FLPMA. Through this material, we have been able to gain a clearer understanding of the issue.

Although most rural electric cooperatives service mostly rural customers, some are involved in commercial practices comparable to those of investor-owned utilities. Providing free use to the cooperative while charging the investor-owned utility for use of NFS land would not be equitable. Thus, the regulations provide for the payment of fair market value fees by cooperatives and other permit holders when their principal source of revenue from the permitted use is customer charges.

An appraisal is made in determining the fee for rights-of-way over Federal lands. The market evidence used in these appraisals is typically derived from a wide market area that includes both cooperatives and investor-owned utilities. The fees will vary according to the amount and value of the land under permit. Our records show that fees for most right-of-way permits are less than \$1,000 per year. We believe the impact of these fees is light, and the added cost to the customer

attributable to the fee is generally minimal. For example, the fees paid by nine electric distribution cooperatives holding permits on National Forest Lands in Montana amount to about \$0.08 per year for each of the 63,926 metered customers. The range of fees is from \$0.01 to \$0.45 per customer per year. Fees paid by eight electric distribution cooperatives with permitted rights-of-way on National Forest land in Missouri amount to about \$0.05 per year for each of the 121,435 metered customers.

It should also be pointed out that not all borrowers of Federal funds under the Rural Electrification Act of 1936, which is the criteria for exemption under the provisions of S. 508, are rural electric and telephone cooperatives. Although most loans insured or guaranteed by REA are made to electric and telephone cooperatives, some are also made to rural telephone companies.

Charging for use of right-of-way is not unique to the Federal land managing agencies. To be sure, cooperatives and investor-owned utilities generally insist that members or customers provide free right-of-way across their property. However, some cooperatives now pay small landowners for rights-of-way that provide power to commercial entities such as sawmills or oil and gas wells. Large landowners often require payment for distribution or transmission purposes. Several large timber companies in the northern Rocky Mountain Region and in the South are charging rural electric and telephone cooperatives for rights-of-way across their lands. In general, we find that landowners charge for rights-of-way in any situation where they perceive no benefit from the rights-of-way. If there is a benefit to them, there will likely be no charge for the easement. This is essentially the same approach adopted by the Forest Service.

S. 598 -- Conveyance of Land to the Town of Payson, Arizona:

S. 598 would authorize the Secretary of Agriculture to transfer a parcel of National Forest System land totaling about 1.10 acres to the town of Payson, Arizona. The land is located on the Tonto National Forest in central Arizona. The land would be transferred without payment and would be used for historical purposes. We recognize the appropriateness of the conveyance, and would have no objection to the legislation if it were amended to require payment of fair market value.

The parcel in question is located within the city limits of this small town. The property served as the headquarters of the Payson Ranger District of the National Forest until 1969 when the District offices were relocated to a site on the east side of town. It is situated directly on the main street of the town and contains all utilities. Three frame structures are located on the property: an office, residence and garage. These structures are presently under permit to the Payson Unified School District for use as storage.

The property has been identified by the Forest Service as appropriate for further study under the guidelines set forth in the President's Asset Management Program, a part of some 6 million acres of NFS land so identified for study, if appropriate authorizing legislation is passed. We should also point out that the 1.1-acre tract and other Federal lands adjacent to the town had been earlier identified as suitable for conveyance to the town of Payson under the provisions of the Townsite Act (Act of July 31, 1958; 72 Stat. 438, as amended). This Act provides that communities in the 11 contiguous Western States may acquire up to 640 acres of National Forest System land for community expansion upon payment of fair market value for the land.

Our view is that the proposed use of the site as a museum to be administered by the Northern Gila County Historical Society would be appropriate. However, in keeping with the President's direction that all conveyances of Federal lands should be at fair market value, and with the direction set forth in the Townsite Act, under which five western communities have purchased land to expand or provide community facilities, we feel that payment is appropriate. We urge that the Subcommittee amend the bill to require payment of the fair market value of the land. Granting the property to the town of Payson would be contrary to those similar conveyances to other towns in the West.

That concludes my prepared statement. I would be happy to answer the Subcommittee's questions.

Senator WALLOP. Thank you very much, Mr. MacCleery.
Director Dickenson.

**STATEMENT OF RUSSELL E. DICKENSON, DIRECTOR, NATIONAL
PARK SERVICE, DEPARTMENT OF THE INTERIOR**

Mr. DICKENSON. On S. 864, Mr. Chairman, which deals with amending the Volunteers in the Parks Act of 1969 to remove a ceiling limitation, we are heartily in accord with that.

It has been one of the most successful programs that we have. Originally the Congress established a \$100,000 ceiling. Later it was raised to \$250,000. This legislation proposes to remove that to enable the program to continue its extraordinary success that we have had with it.

Senator WALLOP. Thank you very much.

[The prepared statement of Mr. Dickenson on S. 864 follows:]

STATEMENT OF RUSSELL E. DICKENSON, DIRECTOR, NATIONAL PARK SERVICE DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER, SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES ON S. 864, A BILL, "TO AMEND THE VOLUNTEERS IN THE PARKS ACT OF 1969, AND FOR OTHER PURPOSES."

JUNE 27, 1983

MR. CHAIRMAN, THANK YOU FOR THE OPPORTUNITY TO PRESENT THE VIEWS OF THE NATIONAL PARK SERVICE ON S. 864, WHICH AMENDS THE ACT OF JULY 29, 1970, REGARDING THE VOLUNTEERS IN THE PARKS ACT.

THE VOLUNTEERS IN THE PARKS ACT OF 1969 AUTHORIZED THE ACCEPTANCE OF VOLUNTEER SERVICES OF INDIVIDUALS WITHOUT COMPENSATION FOR OR IN AID OF INTERPRETIVE FUNCTIONS, OR OTHER VISITOR SERVICES OR ACTIVITIES IN AND RELATED TO AREAS ADMINISTERED BY THE NATIONAL PARK SERVICE. UNDER THE ACT, THE NATIONAL PARK SERVICE PROVIDES INCIDENTAL TRANSPORTATION, UNIFORMS, LODGING, AND SUBSISTENCE, AND THE VOLUNTEER CITIZEN IS PROTECTED FROM TORT CLAIMS AND WORK INJURIES. THE VOLUNTEER PROGRAM PROVIDES ANOTHER SUCCESSFUL AND COST-EFFECTIVE ALTERNATIVE IN ACCOMPLISHING NEEDED WORK FOR THE NATIONAL PARK SERVICE.

AS ORIGINALLY ENACTED IN 1970, THE ACT LIMITED APPROPRIATIONS TO CARRY OUT ITS PROVISIONS TO \$100,000 PER YEAR. THIS LIMITATION WAS INCREASED BY THE ACT OF NOVEMBER 13, 1975, TO \$250,000 PER YEAR. THE AMENDMENT PROPOSED BY S. 864 WOULD STRIKE OUT THE ANNUAL LIMITATION ALTOGETHER. IN THIS WAY THE AUTHORITIES IN THE ACT CAN BE USED AS AN INTEGRAL PART OF OVERALL PARK OPERATIONS. THUS, A PARK MANAGER WOULD BE ABLE TO BUDGET EXPENSES FOR VOLUNTEER SUPPORT IN THE SAME MANNER AS COSTS OF SALARIES, TRAVEL, UTILITIES, FUEL, AND OTHER NORMAL COSTS OF OPERATING AND MANAGING A PARK AREA ARE

BUDGETED. THE CURRENT CEILING OF \$250,000 PER YEAR NOT ONLY LIMITS THE NUMBER OF VOLUNTEERS WHOSE SERVICES CAN BE ACCEPTED, BUT ALSO REQUIRES A SEPARATE ACCOUNTING SYSTEM, DISTINCT FROM NORMAL OPERATING COSTS, WHICH WE BELIEVE IS UNNECESSARY. WE NOTE THAT THE CONGRESS REMOVED THE ANNUAL APPROPRIATION CEILING APPLICABLE TO THE VOLUNTEERS IN THE NATIONAL FORESTS PROGRAM IN 1978. THE SAME ACTION SHOULD BE TAKEN WITH RESPECT TO THE PARALLEL PROGRAM IN THE NATIONAL PARKS.

THOUSANDS OF PEOPLE HAVE CONTRIBUTED THEIR TIME AND TALENT TO HELP THE NATIONAL PARK SERVICE ACCOMPLISH ITS MISSION. IN FY' 81 ALONE, 8,326 INDIVIDUAL VOLUNTEERS CONTRIBUTED MORE THAN 535,000 HOURS OF WORK, VALUED AT ABOUT \$4 MILLION. THIS REPRESENTS A 28% INCREASE IN THE NUMBER OF VOLUNTEERS OVER FY '80, AND A SIMILAR OR HIGHER RATE OF INCREASE APPEARS TO HAVE CONTINUED IN FY' 82. PRESENTLY, THE NATIONAL PARK SERVICE RECEIVES APPROXIMATELY \$16 WORTH OF VOLUNTARY WORK FROM EVERY \$1 SPENT ON THE PROGRAM. ENACTMENT OF S. 864 WOULD PERMIT THE NATIONAL PARK SERVICE TO MAKE FURTHER USE OF THIS HIGHLY COST-EFFECTIVE PROGRAM.

THIS CONCLUDES MY PREPARED STATEMENT. I AM HAPPY TO ANSWER ANY QUESTIONS YOU OR MEMBERS OF THE SUBCOMMITTEE MAY HAVE.

Mr. DICKENSON. On S. 807, Cumberland Island, this amends the boundaries of Cumberland Island National Seashore to remove an authorized headquarters site called Point Peter.

Our present operations are located at St. Mary's, a small community in Georgia. It is working very, very successfully. It has a deep harborage which is used by our transportation concessioner for taking visitors to Cumberland Island.

So we again are in accord with this legislation since it is our intent to continue the St. Mary's site as our headquarters there.

Senator WALLOP. Thank you, Sir.

[The prepared statement of Mr. Dickenson on S. 807 follows:]

STATEMENT OF RUSSELL E. DICKENSON, DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER, SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, CONCERNING S. 807, A BILL "TO AMEND THE BOUNDARIES OF THE CUMBERLAND ISLAND NATIONAL SEASHORE."

JUNE 27, 1983

MR. CHAIRMAN, THANK YOU FOR THE OPPORTUNITY TO PRESENT OUR VIEWS ON THIS LEGISLATION.

CUMBERLAND ISLAND NATIONAL SEASHORE IN GEORGIA WAS AUTHORIZED BY THE ACT OF OCTOBER 23, 1972 (89 Stat. 1066). THE AREA ENCOMPASSES 36,978 ACRES. THE ACT OF SEPTEMBER 8, 1982 (96 Stat. 709), DESIGNATED 8,840 ACRES WITHIN THE SEASHORE AS WILDERNESS.

AS ORIGINALLY AUTHORIZED IN 1972, THE BOUNDARY ENCOMPASSED A MAINLAND SITE OF ABOUT 300 ACRES AT A LOCATION CALLED THE PINE TREE SITE. THIS SITE WAS NEVER ACQUIRED, AND ON THE BASIS OF FURTHER PLANNING IN 1978 THE BOUNDARY WAS REVISED BY SECTION 323 OF THE NATIONAL PARKS AND RECREATION ACT OF 1978 TO EXCLUDE THE PINE TREE SITE AND INCLUDE A NEW MAINLAND SITE OF 568 ACRES AT POINT PETER. THIS SITE HAS NOT BEEN ACQUIRED. THE NEW BOUNDARY MAP REFERRED TO IN S. 807 WOULD EXCLUDE THE 568-ACRE MAINLAND SITE AT POINT PETER.

WHILE PLANNING HAS CONTINUED, HOWEVER, MAINLAND ADMINISTRATIVE FACILITIES HAVE BEEN LEASED FOR THE NATIONAL PARK SERVICE BY GSA IN THE NEARBY COMMUNITY OF ST. MARYS. WE BELIEVE THE CURRENT MAINLAND ADMINISTRATIVE SITE AT ST. MARYS IS PREFERABLE TO THE SITE AUTHORIZED AT POINT PETER, AND WE THEREFORE SUPPORT THE ENACTMENT OF THE BILL. AS STATED, WE HAVE NOT ACQUIRED ANY LAND IN THE 568-ACRE MAINLAND SITE AT POINT PETER.

ST. MARYS, GEORGIA, IS SMALL WITH A POPULATION OF 4,700 AS ESTIMATED IN 1976. IT IS ONE OF GEORGIA'S HISTORIC CITIES, WELL ESTABLISHED IN GEORGIA HISTORY. THE CITY WATERFRONT RESOURCE PROVIDES AN ATTRACTIVE FISHING VILLAGE ATMOSPHERE CLOSELY TIED TO THE ADJACENT DOWNTOWN HISTORIC DISTRICT, WHICH IS LISTED ON THE NATIONAL REGISTER. ST. MARYS HAS TRADITIONALLY BEEN USED AS THE EMBARKATION POINT FOR VISITORS TO CUMBERLAND ISLAND NATIONAL SEASHORE. IT HAS DEPENDABLE PROTECTED DEEP-WATER DOCK FACILITIES. THROUGH A LEASE ARRANGEMENT WITH THE GENERAL SERVICES ADMINISTRATION, THE NATIONAL PARK SERVICE HAS ESTABLISHED ITS HEADQUARTERS ON THE ST. MARYS RIVER IN THE CITY OF ST. MARYS. ADJACENT CITY PARKING IS AVAILABLE FOR ABOUT 160 CARS. THE CITY PROVIDES WATER AND SEWER SERVICES AND GEORGIA POWER PROVIDES ELECTRIC SERVICES. THERE WOULD BE NO SIGNIFICANT ENVIRONMENTAL DAMAGES IF ST. MARYS WERE CONTINUED TO BE USED AS AN EMBARKATION POINT. NO DREDGING IS REQUIRED, NO ROADWAYS ARE REQUIRED AND NO NEW COMMERCIAL AREAS SURROUNDING THE MAINLAND BASE WOULD HAVE TO BE BUILT, AS WOULD PROBABLY BE REQUIRED IF THE 568-ACRE POINT PETER SITE WERE ACQUIRED AND DEVELOPED AS AN ADMINISTRATIVE HEADQUARTERS.

OUR CURRENT PLANNING EFFORTS FOR CUMBERLAND ISLAND NATIONAL SEASHORE DO NOT SUPPORT A SUBSTANTIAL INCREASE IN VISITATION TO THE SEASHORE AND, THEREFORE, WE HAVE NO PLANS TO EXPAND THE FACILITIES WHICH ARE CURRENTLY AVAILABLE IN ST. MARYS.

WE UNDERSTAND THAT THE CITIZENS OF ST. MARYS SUPPORT THE CONTINUED LOCATION OF THE MAINLAND BASE IN THEIR CITY.

THIS CONCLUDES MY PREPARED STATEMENT. I WOULD BE HAPPY TO ANSWER ANY QUESTIONS YOU OR MEMBERS OF THE SUBCOMMITTEE MAY HAVE.

Mr. DICKENSON. On S. 600, Grand Canyon schools, in Grand Canyon National Park is a school which serves primarily the children of Federal employees. The buildings and facilities are owned by the Federal Government, which ought to provide the normal kind of aid and assistance to an impacted school district.

It became obvious many years ago in Yellowstone National Park that some additional Federal assistance was required for the school facilities there, and in 1948 provisions were legislated to take a certain sum each year from entrance receipts collected from visitors to Yellowstone Park and make this sum available to the local school district.

That is the intent of S. 600, but we must oppose that for a couple of reasons. One is that there is before the Congress, Mr. Chairman, an initiative by the administration to dedicate all fee receipts to the operation of the national park system which would enable us to take care of previously unfunded requirements.

We see this as a piecemealing of that particular principle. However, we hasten to add that the amount of \$2,175,000 has been identified as the most immediate need in terms of bringing buildings up to code. We are going to look at the \$25 million which was appropriated to the National Park Service in the jobs bill. Out of that perhaps we can identify some savings or other reprogramings and we would propose that up to \$1 million, if we can identify those savings, be spent immediately.

There are other opportunities for which we will commit to arrive at the \$2.175 million. In addition, the need for supplemental annual maintenance funds for each year is estimated to be \$225,000 and we will also commit putting that in our budget each year in lieu of the provision as outlined in this legislation.

Senator WALLOP. Thank you very much.

[The prepared statement of Mr. Dickenson on S. 600 follows:]

STATEMENT OF RUSSELL E. DICKENSON, DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER, SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES CONCERNING S. 600, A BILL, "TO AMEND PUBLIC LAW 95-244."

JUNE 27, 1983

MR. CHAIRMAN, WE APPRECIATE THE OPPORTUNITY TO TESTIFY ON THIS LEGISLATION.

S. 600 WOULD AMEND PUBLIC LAW 95-244. THAT LAW, APPROVED MARCH 14, 1978, AUTHORIZED THE SECRETARY OF THE INTERIOR TO MAKE PAYMENTS TO THE SCHOOL DISTRICT PROVIDING EDUCATIONAL BENEFITS FOR PUPILS LIVING IN OR NEAR GRAND CANYON NATIONAL PARK. THE ACT AUTHORIZED THE APPROPRIATION OF \$1.5 MILLION FOR EACH OF FISCAL YEARS 1979 AND 1980. THE ACT APPROVED DECEMBER 23, 1980, AMENDED THE 1978 ACT TO AUTHORIZE \$1.5 MILLION FOR EACH OF FISCAL YEARS 1979 THROUGH 1982, A TOTAL OF \$6 MILLION. LANGUAGE WAS ALSO ADDED MAKING AMOUNTS AUTHORIZED BUT NOT APPROPRIATED AVAILABLE FOR APPROPRIATION IN SUCCEEDING FISCAL YEARS. APPROPRIATIONS ARE REQUIRED TO BE REDUCED BY THE AMOUNT OF IMPACT AID FUNDS MADE AVAILABLE TO THE SCHOOL DISTRICT. UNDER THE 1978 LAW, AS AMENDED, \$750,000 HAS BEEN APPROPRIATED AND MADE AVAILABLE TO THE GRAND CANYON UNIFIED SCHOOL DISTRICT. THUS, UNDER EXISTING LAW, THERE REMAINS \$5.25 MILLION AUTHORIZED BUT NOT APPROPRIATED FOR PURPOSES OF THE SCHOOL FACILITIES.

S. 600 AMENDS THE 1978 ACT BY --

- (1) CHANGING THE SOURCE OF FUNDS FOR SUCH PAYMENTS FROM APPROPRIATED FUNDS TO REVENUES RECEIVED BY THE UNITED STATES FROM VISITORS TO GRAND CANYON NATIONAL PARK;

- (2) ELIMINATING THE TIME LIMIT WITHIN WHICH PAYMENTS MAY BE MADE TO THE SCHOOL DISTRICT;
- (3) ELIMINATING THE REQUIREMENT THAT PAYMENTS BE REDUCED BY THE AMOUNT OF IMPACT AID FUNDS; AND
- (4) DIRECTING THE SECRETARY OF THE TREASURY TO MAKE PAYMENTS FROM PARK REVENUES BASED ON ESTIMATES CERTIFIED BY THE SECRETARY OF THE INTERIOR.

THE NATIONAL PARK SERVICE HAS ESTIMATED THAT 90 PERCENT OF THE STUDENT POPULATION MAKES NO CONTRIBUTION TO THE FINANCIAL BASE OF THE GRAND CANYON UNIFIED SCHOOL DISTRICT BECAUSE MOST OF THE PUPILS LIVE ON NONTAXABLE FEDERAL LANDS.

THE PHYSICAL PLANT OF THE SCHOOL DISTRICT IS IN DISREPAIR, REQUIRING REHABILITATION AND MAJOR MAINTENANCE. BECAUSE IT IS CLEAR THAT IT IS IN THE INTEREST OF THE FEDERAL GOVERNMENT THAT THE CHILDREN OF FEDERAL EMPLOYEES IN THE PARK HAVE ADEQUATE EDUCATIONAL FACILITIES, WE SUPPORT SOME FORM OF ASSISTANCE TO THE SCHOOL DISTRICT. WE ESTIMATE THAT THE COST OF BRINGING THE BUILDINGS AND EQUIPMENT UP TO STANDARD WILL BE APPROXIMATELY \$2,175,000 IN 1980 DOLLARS. THAT FIGURE IS THE SUM OF THE FOLLOWING:

CONSTRUCTION AND REHABILITATION:

LIFE-SAFETY CODE NEEDS (BRINGING	YEAR 1	\$ 840,000
BUILDINGS UP TO CODE)		

REHABILITATION MONEY (MODIFICATIONS TO VOCATIONAL EDUCATION BUILDING AND SCIENCE LAB, NEW RESTROOMS AND MECHANICAL WORK)	YEAR 2	\$ 693,000
REHABILITATION MONEY (PARKING AREAS, PLAYGROUND AND HOUSING)	YEAR 2	\$ <u>642,000</u>
TOTAL		\$2,175,000

THE NEED FOR SUPPLEMENTAL ANNUAL MAINTENANCE FUNDS FOR EACH YEAR IS ESTIMATED TO BE \$225,000 FOR THE SCHOOL DISTRICT.

UNDER S. 600, THE FUNDS MADE AVAILABLE TO THE SCHOOL DISTRICT WOULD NOT BE SUBJECT TO THE APPROPRIATION PROCESS. MR. CHAIRMAN, IN VIEW OF THE FACT THAT \$5.25 MILLION IS ALREADY AUTHORIZED UNDER EXISTING LAW, WE CANNOT SUPPORT AN OFF-BUDGET MECHANISM TO PROVIDE FUNDS FOR THE SAME PURPOSE. THE ADMINISTRATION IS, PREPARED, HOWEVER, TO LOOK AT THE \$25 MILLION RECENTLY APPROVED IN THE "JOBS BILL" TO DETERMINE WHAT PROJECT SAVINGS OR PROJECT DELETIONS MIGHT BE POSSIBLE TO GENERATE UP TO \$1 MILLION FOR THE GRAND CANYON SCHOOL DISTRICT NEEDS. THIS WILL BE IN ACCORDANCE WITH A COOPERATIVE AGREEMENT WITH THE SCHOOL DISTRICT PURSUANT TO SUBSECTION (b) OF THE EXISTING LAW. IN ADDITION, WE WILL, WITHIN OVERALL PRIORITIES, ATTEMPT TO (1) PROVIDE THE REMAINING \$1.175 MILLION NEEDED FOR CAPITAL IMPROVEMENTS IN FISCAL 1984 AND LATER YEARS; AND (2) BUDGET FOR THE APPROPRIATION OF \$225,000 EACH YEAR FOR MAINTENANCE AND UPKEEP OF THE PHYSICAL PLANT. FURTHER, WE INTEND TO DISCUSS WITH THE STATE AND COUNTY THE POSSIBILITY OF DEVELOPING A COMPREHENSIVE FINANCIAL ASSISTANCE PACKAGE FOR THE SCHOOL DISTRICT, INVOLVING FUNDS FROM STATE, LOCAL, AND OTHER FEDERAL SOURCES.

MR. CHAIRMAN, IT IS APPROPRIATE HERE TO POINT OUT THAT THE ADMINISTRATION HAS BEFORE THE CONGRESS AN INITIATIVE TO DEDICATE PARK ENTRANCE FEES TO THE MAINTENANCE AND IMPROVEMENT OF PARK FACILITIES AND RESOURCES. S. 600 REPRESENTS A PIECEMEAL APPLICATION OF THAT PRINCIPLE. IF ENACTED, THE ADMINISTRATION'S INITIATIVE WOULD ESTABLISH A SPECIAL ACCOUNT WHICH WOULD BE AVAILABLE TO MEET NEEDS, SUCH AS THESE SCHOOL FACILITIES, THAT WERE PREVIOUSLY UNFUNDED. WE REITERATE THE DEPARTMENT'S SUPPORT FOR THE PROPOSAL THAT WAS SUBMITTED TO THE CONGRESS EARLIER THIS YEAR.

THEREFORE, WHILE WE CANNOT SUPPORT THE ENACTMENT OF S. 600, WE DO INTEND TO PROVIDE THE FUNDS TO BRING THESE FACILITIES UP TO HEALTH AND SAFETY STANDARDS UNDER EXISTING AUTHORITY THIS YEAR, AND WILL CONSIDER OTHER FACILITY IMPROVEMENTS IN THE CONTEXT OF THE REGULAR BUDGET AND APPROPRIATIONS PROCESS.

THIS CONCLUDES MY PREPARED TESTIMONY. I WOULD BE PLEASED TO ANSWER ANY QUESTIONS.

Mr. DICKENSON. At Pictured Rocks National Lakeshore, which is S. 620, this particular piece of legislation would call upon local governmental jurisdictions to arrive at a land-use plan, in essence a zoning plan, for a portion of that area called the inland buffer zone.

Mr. Chairman, there are two pieces to the Pictured Rocks. One is the shoreline strip which is managed in the normal fashion. The legislation for Pictured Rocks delineated the other—an inland buffer zone which would permit those activities deemed to be compatible with overall lakeshore purposes such as regulated, sustained yield forestry, and some residential use.

But since it is a very delicate ecosystem, special attention was to be given to streams and drainages and that, of course, is the intent of this. Now we oppose this particular piece of legislation based upon the kinds of experience that we have had for 20 years now at Cape Cod and Fire Island.

While it is true that in each of those cases we were dealing with enclaves, small communities, that were required to produce zoning laws that had to be in accordance with the approval of the Secretary, we believe that that is not the most cost-effective and efficient way to go about it.

The present legislation calls for the Federal Government, the National Park Service, to consult and advise local governmental jurisdictions about the kind of activities that could be permitted in the inland buffer zone.

We strongly urge that that method be continued as opposed to legislating a requirement for the jurisdiction to produce a zoning plan. The situation up to this point has operated satisfactorily.

Senator WALLOP. Thank you very much.

Without objection statements of Senators Riegle and Levin will be accepted for the record at this point.

[The prepared statements of Senators Riegle and Levin and Mr. Dickenson on S. 620 follow:]

STATEMENT OF
U.S. SENATOR DONALD RIEGLE
PICTURED ROCKS NATIONAL LAKESHORE

MR. CHAIRMAN: I would like to thank you for bringing this legislation up for consideration today and for allowing Senator Levin and myself the opportunity to testify on its behalf. This is an important matter to the people of Alger County in Michigan's Upper Peninsula and I appreciate the chance to outline their concerns and our proposed solution.

S. 620 would amend PL 89-668, the enabling legislation which created the Picture Rocks National Lakeshore and will correct problems associated with the buffer zone along the boundaries of the park. This bill represents a compromise position, developed by the residents of the area together with my staff and Senator Levin's staff. Congressman Bob Davis, who represents the Upper Peninsula, has introduced a companion measure in the House of Representatives.

Pictured Rocks was originally established with two zones, a fee boundary and a buffer zone. Numerous individuals own private tracts within the buffer zone, and no acquisition is authorized. The enabling legislation place broad restrictions against development of this property, although residents have never been compensated or properly informed of what constituted legal development. Twenty homes have since been built in the buffer zone, all potentially subject to condemnation due to non-compliance with the development restrictions.

This legislation directs the local governments to jointly develop a land use plan and zoning regulations which would protect the resources, promote the private development of visitor service facilities, permit timber management and provide policies for the maintenance and improvement of roads within the buffer zone.

The amendment would also:

Grandfather all development that has taken place in the buffer zone since it was created;

Delete one 320-acre section of land that contains a 20 home subdivision;

Add a 140-acre parcel containing a road to serve as the eastern entrance corridor into the lakeshore;

Create a six-member joint Authority, made up of one representative from each of the three local governing boards, one resident landowner, the Superintendent of the Lakeshore, and the National Park Service Regional Director or his representative. This Authority would be charged with preparing a land use management plan and zoning regulations for the buffer zone within two years of its creation;

Give local governments six months to adopt and enforce the zoning regulations.

Provide for an annual meeting of the Authority to review and act on amendments of the land use plan and regulations;

Restrict the NPS' power to condemn lands only if it is being used in a manner that is clearly inconsistent with the plan or zoning regulations adopted by the Authority.

S. 620 has been endorsed by the Neighbors of Pictured Rocks (the local residents group), the Upper Peninsula Federation of Landowners, the Alger County Planning Commission, the Burt Township Zoning Board and the Burt Township Board. There is a consensus that this is a reasonable and acceptable approach to solving the problems created by the buffer zone.

Mr. Chairman, I believe this legislation addresses the landowners' concerns while preserving the authority of the NPS and the Department of the Interior to oversee the park and protect the integrity of the Lakeshore. I hope that you and the members of the Subcommittee will support S. 620.

TESTIMONY OF SENATOR CARL LEVIN BEFORE THE ENERGY COMMITTEE SUBCOMMITTEE
ON PUBLIC LANDS AND RESERVED WATER.

Mr. Chairman, I want to thank you for holding this hearing to consider S. 620, a bill introduced by Senator Riegle and myself. I appreciate the opportunity to present my views on this proposed legislation.

The late Senator Philip A. Hart left a proud legacy. One of his most beautiful achievements was the establishment of Pictured Rocks National Lakeshore on the shore of Lake Superior.

Established in 1966, the Lakeshore combines stunning rock cliffs along the south shore of Lake Superior with superb back country trails. It stretches from Munising on the west to Grand Marais on the east, a distance of 42 miles.

Despite this great width, the Park is rather shallow north to south. A "buffer Zone" was established along its southern boundary to protect the delicate ecosystems within the Lakeshore.

Unfortunately, the Buffer Zone has always been a problem for the Lakeshore managers and a thorn in the side of private property owners. The legislation that created the Park gave the Park Service almost unlimited authority to control development in the Zone, authority the Park Service has been reluctant to use. This has caused uncertainty and frustration for those owning property within the Buffer Zone.

Some property owners have chosen to build new homes or renovate existing structures. Others have hesitated, fearing a loss of investment. Many have called for the dissolution of the Zone in the belief that environmental laws passed since 1966 are sufficient to protect the area.

Many park users and concerned citizens have opposed that effort. They maintain that a regulated extension to the Park is still needed. Members of my staff, Senator Riegle's staff, Congressman Davis' staff, community leaders, Park Service officials, and interested individuals worked for the past two years to try to find a solution to the problem

PAGE 2

that would be acceptable to all.

The legislation before you today, S. 620, is the result of that effort. Enactment of this legislation will allow local government leaders, in cooperation with the Park Service, to develop a land use and zoning plan for this area. The Secretary of the Interior would have the right to reject any plan.

Once a plan is accepted, however, the local units of government would have the responsibility of enforcing the land use and zoning plan. I believe that this will give the residents of the Buffer Zone the same general rights as their neighbors (who are just across the road in many cases).

S.620 will allow limited development in a manner consistent with the local area. It will clearly detail what can and cannot be done so that landowners will know what their rights are and all potential purchasers know what they are buying. As it is now, some residents cannot find buyers for their homes that would be valued at \$40,000 a mile away — even if they are asking only half that amount. The uncertainty facing landowners in the Buffer Zone has been a burden on these citizens for too long and S.620 is the best way of rectifying this condition.

The Interior Department argument that the present system works is wrong. The present system does not work; otherwise local citizens and residents would not be demanding that the statute be changed. Since the creation of the Lakeshore, the Park Service has never issued regulations governing what activities and building modifications would be allowed in the Buffer Zone and which would lead to condemnation of property within the Buffer Zone. S. 620 fills this void.

PAGE 3

Enactment of S.620 will also raise the Park's development ceiling consistent with its management plan, allow the Park Service to acquire needed property to provide visitor information centers, and authorize modest funding for vitally needed road improvements.

Mr. Chairman and members of the Committee, this legislation is a tribute to the cooperative efforts of many diverse interests. Its passage will assure fair, effective park development and assure basic rights to local residents. I encourage you to report it out favorably. Thank you.

STATEMENT OF RUSSELL E. DICKENSON, DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER, SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, CONCERNING S. 620, A BILL "TO AMEND PUBLIC LAW 89-668, RELATING TO THE PICTURED ROCKS NATIONAL LAKESHORE, TO REQUIRE THE DEVELOPMENT OF A LOCAL LAND USE PLAN AND ZONING REGULATIONS FOR THE INLAND BUFFER ZONE."

JUNE 27, 1983

MR. CHAIRMAN, WE APPRECIATE THE OPPORTUNITY TO DISCUSS THIS LEGISLATION.

PICTURED ROCKS NATIONAL LAKESHORE IN MICHIGAN WAS AUTHORIZED BY THE ACT OF OCTOBER 15, 1966 (P.L. 89-668; 80 Stat. 922). IT CONTAINS APPROXIMATELY 70,807 ACRES OF LAND AND WATER, OF WHICH 35,424 ACRES ARE FEDERALLY OWNED. PICTURED ROCKS PROTECTS SANDSTONE CLIFFS, BEACHES, SAND BARS, DUNES, MARSHES, AND HARDWOOD AND CONIFEROUS FORESTS ON A SCENIC PORTION OF THE LAKE SUPERIOR SHORE. IN 1982, THE LAKESHORE WAS VISITED BY 358,000 PEOPLE.

THE LAKESHORE CONSISTS OF TWO ZONES: A LAKESHORE ZONE OF 33,233 ACRES, AND AN INLAND BUFFER ZONE OF 37,574 ACRES. THE INLAND BUFFER ZONE WAS ESTABLISHED IN THE 1966 ACT,

"TO STABILIZE AND PROTECT THE EXISTING CHARACTER AND USES OF THE LANDS, WATERS, AND OTHER PROPERTIES WITHIN SUCH ZONE FOR THE PURPOSES OF PRESERVING THE SETTING OF THE SHORELINE AND LAKES, PROTECTING THE WATERSHEDS AND STREAMS, AND PROVIDING FOR THE FULLEST ECONOMIC UTILIZATION OF THE RENEWABLE RESOURCES THROUGH SUSTAINED YIELD TIMBER MANAGEMENT AND OTHER RESOURCE MANAGEMENT COMPATIBLE WITH THE PURPOSES OF THIS ACT."

UNDER THE 1966 ACT, THE SECRETARY IS PROHIBITED FROM ACQUIRING BY CONDEMNATION WITHIN THE INLAND BUFFER ZONE THE FOLLOWING TYPES OF PROPERTY:

- (1) ONE-FAMILY DWELLINGS CONSTRUCTED BEFORE DECEMBER 1964,
- (2) PROPERTY USED FOR GROWING AND HARVESTING OF TIMBER UNDER A SCIENTIFIC PROGRAM OF SELECTIVE CUTTING AND FOREST MANAGEMENT, AND
- (3) PROPERTY USED FOR COMMERCIAL PURPOSES, IF THE USE IS THE SAME AS IN DECEMBER 1964 AND SO LONG AS SUCH USE WOULD FURTHER THE PURPOSES OF THE ACT AND DOES NOT IMPAIR THE USEFULNESS AND ATTRACTIVENESS OF THE LAKESHORE.

THE 1966 ACT AUTHORIZED THE APPROPRIATION OF NOT MORE THAN \$6,873,000 FOR LAND ACQUISITION AND NOT MORE THAN \$6,348,000 FOR DEVELOPMENT. THERE CURRENTLY REMAINS UNAPPROPRIATED UNDER THOSE CEILINGS \$758,772 FOR LAND ACQUISITION AND \$3,296,000 FOR DEVELOPMENT. NO FUNDS ARE REQUESTED IN THE PRESIDENT'S BUDGET FOR FY 1984 FOR ACQUISITION OR DEVELOPMENT.

S. 620 WOULD AMEND THE 1966 ACT IN THE FOLLOWING WAYS:

- ADDS AUTHORITY TO ACQUIRE PROPERTY OUTSIDE THE BOUNDARIES IN THE MUNICIPALITIES OF GRAND MARAIS AND MUNISING FOR VISITOR INFORMATION AND ADMINISTRATIVE CENTERS. THIS AUTHORITY WOULD BE LIMITED TO ACQUISITION BY TRANSFER FROM ANOTHER FEDERAL AGENCY OR DONATION FROM ANY SOURCE.
- REVISES THE PROHIBITIONS ON CONDEMNATION IN THE INLAND BUFFER ZONE TO PROHIBIT CONDEMNATION OF ONE-FAMILY DWELLINGS CONSTRUCTED BEFORE SEPTEMBER 1982 AND ANY OTHER PROPERTY USED IN A MANNER CONSISTENT WITH LOCAL ZONING REGULATIONS.

- DELETES AUTHORITY TO ASSIST LOCAL GOVERNMENTS IN DEVELOPING ZONING BYLAWS AND SUBSTITUTES AN AUTHORIZATION FOR LOCAL GOVERNMENTS TO DEVELOP A LAND USE PLAN AND ZONING REGULATIONS FOR THE INLAND BUFFER ZONE. THE PLAN AND REGULATIONS MUST BE CONSISTENT WITH THE GENERAL MANAGEMENT PLAN FOR THE LAKESHORE AND MUST BE APPROVED BY THE SECRETARY.
- INCREASES THE APPROPRIATION LIMITATION FOR DEVELOPMENT FROM \$6,348,000 TO \$26,780,000.
- ADDS AUTHORITY TO APPROPRIATE FOR 5 YEARS NOT MORE THAN \$350,000 ANNUALLY FOR MAINTENANCE AND IMPROVEMENT OF NON-FEDERAL ROADS WITHIN THE LAKESHORE.

OUR COMMENTS ON EACH OF THESE PROVISIONS FOLLOW:

FIRST, WE DO NOT SUPPORT THE AUTHORITY TO ACCEPT A TRANSFER OR DONATION OF PROPERTY FOR VISITOR INFORMATION AND ADMINISTRATIVE SITES. THERE ARE VISITOR INFORMATION AND ADMINISTRATIVE FACILITIES ALREADY WITHIN THE BOUNDARY, AND WE DO NOT PROPOSE AN EXPANSION OF THE AREA BEYOND THE CURRENT BOUNDARY.

SECOND, WE OPPOSE THE NEW PROVISION REQUIRING LOCAL GOVERNMENTS TO DEVELOP A LAND USE PLAN AND ZONING REGULATIONS FOR THE BUFFER ZONE, WHICH MUST BE APPROVED BY THE SECRETARY OF THE INTERIOR. UNDER THE EXISTING SECTION 12 THE SECRETARY IS AUTHORIZED TO ASSIST AND CONSULT WITH LOCAL OFFICIALS IN ESTABLISHING ZONING BYLAWS, BUT NOT TO APPROVE THEM.

THE ONLY WAY THE NATIONAL PARK SERVICE CAN CONTROL LAND USE IN THE INLAND BUFFER ZONE IS TO CONDEMN PROPERTY WE BELIEVE IS USED IN A MANNER DETRIMENTAL TO THE PURPOSE OF THE ZONE. AS I STATED EARLIER, WE ONLY HAVE \$758,772

REMAINING UNAPPROPRIATED UNDER THE 1966 ACQUISITION CEILING. TO ACQUIRE ALL THE LAND IN THE BUFFER ZONE WOULD EXCEED THIS AMOUNT. WE HAVE NO INTENTION OF REQUESTING ADDITIONAL AUTHORITY AND FUNDS TO ENFORCE LOCAL ZONING. FEDERAL CONDEMNATION IS AN INEFFECTIVE WAY OF ENFORCING LOCAL LAND USE DECISIONS. ALTERNATIVES OTHER THAN FEDERAL CONDEMNATION MUST BE CONSIDERED IN THESE SITUATIONS.

THIRD, WE HAVE NO OBJECTION TO THE NEW "CUTOFF DATE" FOR IMPROVED PROPERTY OF SEPTEMBER 1982. WE DO NOT INTEND TO CONDEMN THE 20 RESIDENCES CONSTRUCTED BETWEEN 1964 AND 1982.

FOURTH, WE CANNOT SUPPORT AN INCREASE IN THE DEVELOPMENT CEILING FROM \$6,348,000 TO \$26,780,000. WE WILL, HOWEVER, BUDGET FOR ADDITIONAL DEVELOPMENTS AS PRIORITIES PERMIT, AND WE WILL SUBMIT APPROPRIATE AMENDATORY LEGISLATION TO AUTHORIZE APPROPRIATIONS FOR THOSE ITEMS IN THE BUDGET.

FIFTH, WE CANNOT SUPPORT THE 5-YEAR AUTHORIZATION OF \$350,000 ANNUALLY FOR IMPROVEMENT OF NON-FEDERAL ROADS. A SPECIAL AUTHORIZATION SUCH AS THIS WOULD NOT BE NECESSARY IF THE ROADS WERE TRANSFERRED TO THE NATIONAL PARK SERVICE, AND WE UNDERSTAND THAT A PORTION OF THE ROAD MILEAGE IN THE LAKESHORE WILL BE SO TRANSFERRED.

THIS CONCLUDES MY PREPARED REMARKS, MR. CHAIRMAN.

Senator WALLOP. Mr. Engdahl, Senator McClure and I are interested in extending the volunteer authority to BLM. My question to you would be: Could BLM effectively use such a program and in what areas would you envision volunteer work?

Mr. ENGDAHL. We very much could use it. We appreciate all the help we can get. Yes, we can use it in the conservation and development of our resource management areas. We would like the same authority that our sister agencies in Interior and, of course, the other national resource area, the Forest Service and Department of Agriculture.

Frankly what we need is an opportunity to keep our volunteers from being second-class citizens. We would like a little help on that and yes, we have ample opportunity to utilize volunteers throughout the conservation program.

Senator WALLOP. You would probably support such a move—

Mr. ENGDAHL. We will support it wholeheartedly, sir.

Senator WALLOP. Thank you very much. I thank you gentlemen very much for your testimony this morning.

Mr. ENGDAHL. Thank you.

Mr. DICKINSON. Thank you.

Senator WALLOP. First we have a panel consisting of Mr. William F. Ringert from Boise, Mr. Milo Axelman, Caldwell, Idaho, and Mr. D. Patrick Morris, Boise, Idaho.

They will be testifying on S. 482.

Gentlemen, if you could summarize your statements and proceed as you will.

STATEMENT OF WILLIAM F. RINGERT, ATTORNEY, BOISE, IDAHO

Mr. RINGERT. Thank you very much, Mr. Chairman. My name is William F. Ringert. I reside at Boise, Idaho. I thank the subcommittee for the opportunity to testify on this bill.

Would it be in order, Mr. Chairman, to present a couple of comparison photographs?

Senator WALLOP. By all means.

Mr. RINGERT. Thank you, Sir.

Senator WALLOP. They will go to the committee files for the obvious reasons, their compilation in the record.

Mr. RINGERT. Yes. Thank you.

Mr. Chairman, I have worked with these two desert entry projects for more than 20 years now primarily as counsel for the entrymen and for the people that they worked with in the development.

I think our problem can best be summarized by saying that while these people were trying to develop the lands in accordance with the statutory requirements as they were understood, the Department was undergoing a policy change attempting to develop policy and interpretation of the holding limitation in 43 U.S.C. 329.

The present interpretation so far as I can tell, and I can't tell you how much research I have done on it, was unknown at the time in 1963 when the applications for these entries were filed and even so, in later years, particularly 1964 and 1965 when the development work was being accomplished.

The first decision from the Department on that holding limitation contemporaneous with these entries was in August 1964, more

than a month after final proof had been submitted and final payment made on the Sailor Creek entries.

That decision ruled that the holding limitation applied only to the interest of entrymen and not to the interest of tenant farmers, farm operators, or land development.

It also upheld the validity of 20-year development leases in the so-called Indian Hill project. Here in Sailor Creek they had a 2-year lease with two 5-year options and on one entry it was just a 1-year crop share lease.

My written testimony, Mr. Chairman, has attached to it correspondence and decisions that show the train of development of the administration policy. When you come down to the end of our long trail, the problem is a new interpretation was applied retroactively. The courts upheld that there was—that the law did not permit the Department latitude to give these people an opportunity to conform to the new interpretation.

That, sir, is what we are asking the Congress. I would be glad to answer any questions you might have.

[The prepared statement and a subsequent submittal from Mr. Ringert follow:]

STATEMENT BY WILLIAM F. RINGERT IN SUPPORT OF S. 482,
BEFORE THE UNITED STATES SENATE SUBCOMMITTEE ON
PUBLIC LANDS AND RESERVED WATERS

My name is William F. Ringert and I live in Boise, Idaho. I am an attorney and a member of the Idaho State Senate. I have represented many of the Sailor Creek and Black Mesa desert land entrymen from near the inception of their respective projects, and most of the matters that I will relate to you are based on personal knowledge. I thank the Subcommittee for the opportunity to present this statement, and for their consideration of this bill.

The Desert Land Act was passed in 1877 for the purpose of encouraging private development of desert lands in the western United States, through the construction of private irrigation systems. The Act was amended in several respects in 1891, primarily for the purpose of insuring that, before a patent would be issued by the United States, the land was adequately reclaimed from its desert state, and to recognize the right of assignment, which had been withheld for a number of years by administrative policy decisions of the Department of the Interior.

From about 1920 until shortly after World War II, activity under the Desert Land Act was quite limited, because most of the reliable sources of gravity-flow water had been appropriated, and the opportunity for low-lift pumping pretty well had been

exhausted. In the late 1940's and early 1950's there were several advances in the technology of irrigation pumping, which led to the development of projects both from wells and from surface streams through high-lift pumping. The Sailor Creek project and the Black Mesa project are examples of the new high-lift pumping technology. Both projects raise water more than 500 feet above the Snake River for irrigation of the desert land entries.

As noted, the 1891 Amendment authorized assignments of desert land entries. The Amendment imposed a limitation of 320 acres on holding desert land "by assignment or otherwise." It is to correct the injustice brought about by retroactive application of a new interpretation of that holding limitation, that S. 482 is before you.

The 1891 Amendment was in effect for more than 70 years before the applications for the Sailor Creek and Black Mesa entries were filed. During that time there were no regulations issued by the Department of the Interior to define the holding limitation, except by implication in the case of absolute assignments (transfers of title) of unpatented entries. The regulations of the Department for many years prior to 1963 expressly recognized the right to mortgage an entry, so long as the mortgage created only a lien and did not constitute an absolute conveyance of title. During that same period of time, decisions in desert entry and homestead cases indicated that all

the work of development and farming could be done by agents or others, so long as there was no agreement to transfer title connected with the arrangement.

Development leases of desert land entries had been common in Idaho for a number of years prior to 1963. Judge J. Blaine Anderson of the United States Court of Appeals for the Ninth Circuit, sitting as a District Judge when the Sailor Creek case was in the United States District Court in Idaho in 1976, noted that while he was in private practice from 1950 to 1965 he handled scores of desert land entries and that development leases were common practice and were well known to the officials of the Bureau of Land Management (BLM) in Idaho. Judge Anderson specifically mentioned some BLM officials who helped process the Sailor Creek and Black Mesa entries, such as Orvil G. Hadley, the Manager of the Land Office in Idaho, and Curtis Taylor, a classification officer in the Idaho State Office.

There was a definite change in policy between 1963 and 1966 with regard to development techniques for desert land entries. The earlier policy was reflected in the decision of the Director of the BLM in the Indian Hill case in August of 1964, in which he ruled that long-term development leases were permissible, and that the holding limitation in 43 U.S.C. § 329 applied only to entrymen and not to tenants or contractors working under the entrymen.

It is significant that final proof was submitted on the

Sailor Creek entries about two months before the 1964 decision in the Indian Hill case. The BLM final proof report on the Sailor Creek entries noted that the entries were being farmed under contracts with Sailor Creek Water Company. This is just one of several points that were disregarded by the Interior Board of Land Appeals (IBLA) in arriving at a conclusion that the BLM had not been advised of the arrangements made by the Sailor Creek entrymen for developing and farming their land.

The Indian Hill decision quickly became a matter of fairly common knowledge in Idaho in late August of 1964. A considerable number of desert entry applications in so-called "group projects" were pending at that time, and the applicants and those with whom they dealt welcomed the definitive guidelines furnished by that decision.

In the fall or early winter of 1964 I personally notified BLM officials in Boise, including Mr. Hadley, that the Black Mesa entrymen were interested in having a partnership, Grigg and Anderson (G & A), that included some of the entrymen and relatives of other entrymen, farm the land in the entries. I met with Mr. Hadley and others in the Idaho State Office of the BLM to discuss the point, and asked them directly whether the BLM had any problems with the partnership farming the entries. Mr. Hadley told me there was a difference of opinion within the Department in Washington, D.C., and that not everyone agreed with the Indian

Hill decision and that no guidelines had been furnished by Washington, but indications were that the incidence of a lease should be avoided. As noted later, Mr. Hadley was directly involved in a study that was being conducted in the Idaho State Office at that time, I have no recollection that he advised me of his office's involvement in the matter.

Based on the information received from the Idaho State Office I prepared farm operating agreements, a construction contract, and development agreements, for the Black Mesa entries. The operating agreements required G & A to bear all the operating expense, denied G & A any right of possession, provided for crop and fertilizer selection by mutual agreement between the entryman and the farm operator, and generally afforded substantial protection and maintained substantial control for the entrymen. The entrymen received the first \$32.50 per acre from the sale of crops, and the operator received the balance of the crop income. By this arrangement virtually all the risk of crop failure or low prices was placed on the operator, while the entrymen pretty much were assured of sufficient income to pay their development costs, which were \$225.00 per acre.

In early April of 1965 the first public indication of the change in policy appeared, in the form of an opinion from the Solicitor of the Department to Secretary of the Interior Udall. The opinion concluded that 20-year leases coupled with mortgages

to secure payment for the irrigation system constituted assignments of the entry and that entitlement to possession of the land and its products constituted a holding under 43 U.S.C. § 329. The opinion expressly recognized that even under the Solicitor's reasoning, holding required actual possession and the legal title or legal right to hold or claim such possession. The opinion is reported at 72 Interior Decisions (I.D.) 156.

As soon as word of the opinion reached Idaho, the Black Mesa entrymen sought advice on how to proceed. In hopes of avoiding a confrontation with the BLM, I advised them to cancel the 10-year operating agreements and to adopt one-year operating agreements with essentially the same terms and conditions, and that is what they did. That was accomplished in middle to late April, at a time when construction of the irrigation system was near completion and the farming operations by G & A already were well underway.

Previously, in March of 1965, copies of the operating agreement, the development contract, and the construction contract were submitted to the BLM at the Idaho State Office in Boise, with a request for approval of use of those agreements on two unallowed entries in the Black Mesa project. The BLM replied that it had no guidelines and could not evaluate the legal effect of the agreements. As noted later, the Idaho State Office in December of 1964, approximately three months earlier, had issued a report recommending that "adequate restrictions be imposed to prevent

entrymen from divesting their control of the entries and, in effect, circumventing the assignment provisions of the Desert Land Act." This appears at page 55 of a Joint Water-Land Development Study by Region I of the Bureau of Reclamation and the Idaho State Office of the BLM, dated December 1964.

In July of 1965 the Black Mesa entrymen submitted final proof and made final payment to the BLM, and filed copies of the written agreements then in effect, and advised the BLM that they had cancelled the ten-year operating agreements and that G & A was farming the entries under one-year oral operating agreements. At that time G & A had received little or no income from crops on the entries and appropriate changes could have been agreed upon had the BLM given any indication that the development or farming arrangements were improper. The BLM did nothing for nearly two years. Then it filed administrative complaints against the entries in the Black Mesa project in July of 1967. Similar administrative complaints had been filed against the Sailor Creek entries in May of 1966.

In June of 1965 I met with the Field Solicitor and his assistant in Boise, in an effort to determine whether the BLM had legal objections to the leases, development contracts or final proof on the Sailor Creek entries on which final proof had been made nearly a year before. They told me they were analyzing some aspects of the water right contracts between the entrymen and

Sailor Creek Water Company, which was their approved source of water, but they did not indicate there were any problems with the leases or the mortgages or the development contracts. The water right contracts did not play any apparent role in the theory under which the IBLA in 1975 authorized cancellation of the Sailor Creek entries.

The Field Solicitor did not tell me that the interpretations in the Solicitor's April 1965 opinion would be applied to the Sailor Creek or to the Black Mesa entries. Neither did he tell me about the various studies the Department and the Idaho State Office had been making since early in 1964, in an effort to determine whether the Desert Land Act imposed limitations on the amount of land that could be reclaimed and farmed by a single entity under contracts and leases with the entrymen.

We now know that as early as March of 1964, when development fairly well was underway at Sailor Creek and the Black Mesa entries just had been allowed, the Department was studying the "group project" concept of desert entry development. At that time no crops had been produced on any of the land and neither Sailor Creek Water Company nor G & A had derived any "benefits" in the way of crop proceeds or other income from any of the entries.

There are attached to this Statement copies of memoranda, reports and decisions which show how the Department from March of 1964 to December of 1966 adopted the restrictive development and

farming policies that it applied retroactively to these entries.

These documents are:

<u>DOCUMENT IDENTIFICATION</u>	<u>DATE</u>
Memorandum from State Director (BLM) to Regional Director (BOR) regarding release of withdrawn lands, with reference to letter of March 26, 1964	April 20, 1964
Letter from Regional Director (BOR) to Commissioner (BOR) regarding release of withdrawn lands	May 15, 1964
Decision of the Director (BLM) in the Indian Hill case (excerpts)	August 14, 1964
Speedletter from State Director (BLM) to Director (BLM - Washington, D.C.) regarding relationship of small private reclamation projects to federal reclamation and agricultural programs	December 23, 1964
Joint Water - Land Development Study by BOR and BLM (excerpts)	December 1964
Memorandum from Director (BLM) and Commissioner (BOR) to Secretary of the Interior regarding small private reclamation projects and federal reclamation projects in the Snake River area, submitted in response to requests by the Secretary of the Interior dated September 2, 1964	February 9, 1965
Solicitor's Memorandum to the Secretary of the Interior in the Indian Hill case (excerpts)	April 5, 1965 72 Interior Decisions (I.D.) 156
Recommended Decision in the Indian Hill case, by Administrative Law Judge Dent D. Dalby, adopted by Decision of the Secretary of the Interior (excerpts)	May 25, 1966 and December 30, 1966 . 73 I.D. 386

The final adoption of this policy occurred after the irrigation systems for both projects had been constructed and after the arrangements for farming had been made and had been communicated to the BLM. The leases and the major mortgages on the Sailor Creek entries were made in August and September of 1963. The water right contracts, as required by state law, were recorded in the Elmore County Recorder's office as soon as they were completed. The lease and mortgage were recorded for each entry, as soon as that entry was allowed by the BLM, the first such recording being in November of 1963. The construction and development contracts and the operating agreements on Black Mesa were made in January of 1965. As noted, copies were filed with the BLM in March of 1965 and each entryman submitted copies with his final proof in July of 1965 (the operating agreements had been cancelled by July, and additional copies were not resubmitted with the final proof).

It is apparent that BLM officials in Idaho were concerned about development arrangements in the spring of 1964, and were formally studying such arrangements in the fall of 1964, as reflected at pages 40-43 of the Joint Land-Water Study. Unfortunately, the BLM was not being candid with the Sailor Creek and Black Mesa entrymen, particularly in their responses to the inquiries on behalf of those entrymen. The report expresses concern about entrymen maintaining "control" and about whether

long-term lease and mortgage arrangements would constitute a transfer of an interest in the entry, but the BLM was not telling these entrymen about that concern. For all the entrymen could see, the 1964 Indian Hill decision was still the official interpretation of the Desert Land Act.

Had not the BLM ultimately contested these entries, its failure to communicate its concerns to these entrymen in 1964-1965 might be explained by assuming that it was applying its long-standing policy of administering desert entries according to the interpretation of the Act that was in effect when the particular entry was made. This policy had been in effect since 1882 (see attached excerpt from the decision in William Thompson, 8 L.D. 104 (1889)) and was reiterated in the December 1964 decision in Raymond L. Gunderson, 71 I.D. 477 (excerpt attached).

But the filing of contests in 1966 and in 1967 makes it seem that the BLM was just waiting to firm up a new policy, with the intention of applying that policy retroactively to these entries. Even when the BLM did communicate with the Sailor Creek entrymen in March of 1965 (copy of letter attached), it was not forthright in stating its concerns, which were put in statutory terms without any indication that the 1964 interpretation would be repudiated or that a new interpretation would be adopted and applied retroactively to the Sailor Creek entries.

Long administrative hearings were conducted in the

administrative cases involving both projects. All living entrymen testified at length at the hearings. In Sailor Creek the Administrative Law Judge followed the 1964 interpretation for the most part and held that the entries had not been assigned and that Sailor Creek Water Company did not hold the entries. On appeal, the IBLA adopted and applied the new interpretation, based on the Secretary's 1966 Indian Hill decision. While the Sailor Creek appeal was pending a settlement was agreed upon between the entrymen and the BLM and the water company, under which Sailor Creek Water Company would cease farming the entries and the water right contract balances would be paid off by proceeds from insurance company loans. That settlement was disapproved in Washington because the Justice Department claimed the settlement would prejudice its appeal to the Court of Appeals for the Ninth Circuit in the Indian Hill case, in which the United States District Court had reversed the Secretary and had upheld the 1964 decision. In 1973, the Ninth Circuit reversed the District Court (480 F. 2d 634) and upheld cancellation of the Indian Hill entries. The primary reason for that holding was a finding that the entrymen had agreed to transfer title to their entries after patents had been received.

The ALJ in Black Mesa followed and applied the Secretary's 1966 decision. The IBLA affirmed that ruling and the administrative decisions were upheld by the United States District

Court and by the Ninth Circuit Court of Appeals.

Two aspects of the IBLA and Ninth Circuit decisions need explanation here. First, in Sailor Creek the IBLA declined to estop the BLM from retroactive application of the new interpretation, because it felt the entrymen had not told the BLM what arrangements they had made for developing and farming the land. That finding was based on a single item of hearsay evidence (to which objection was duly made) in the form of a letter from the Land Office Manager stating that his records did not include copies of the agreements. That is not the same as saying that the BLM did not know what the arrangements were.

The Administrative Law Judge expressly found that the BLM knew what the arrangements were and that it actually had encouraged the entrymen to lease the entries to a qualified farmer. Mr. G. Patrick Morris' statement to the Subcommittee addresses this point in detail. The IBLA disregarded that finding, and the testimony on which it was based, without any explanation whatsoever.

In Black Mesa the Administrative Law Judge declined to estop the BLM from retroactive application of the new interpretation, because he ruled there was "illegal inception" in that the entrymen, according to his analysis, had agreed in advance to have G & A develop and farm the land. But in order for that to constitute illegal inception, the new interpretation, adopted in

1965 at the earliest, had to be applied retroactively to what the entrymen did early in 1963 when they filed their applications. There was no realistic way the entrymen could have known that what they allegedly agreed to do would be interpreted more than two years later as a violation of the Desert Land Act. As Judge Anderson stated in the Sailor Creek case, development leases were commonplace in Idaho during that period of time.

Secondly, the Ninth Circuit in Sailor Creek apparently ruled that the meaning of "hold" in 43 U.S.C. § 329 was clear. This opinion is confusing because it refers to a violation of the assignment statute, 43 U.S.C. § 324, but the IBLA had not ruled that the leases and mortgages constituted assignments. The regulations and decisions of the Department up to 1966 uniformly treated assignments as absolute transfers of title to the entry. The finding of clarity in the meaning of "hold" ignored reality. The BLM Director in the 1964 Indian Hill decision, the District Court in its 1970 decision in the Indian Hill case, and the Administrative Law Judge in his 1972 decision in the Sailor Creek case, all ruled that "hold" referred only to the interest of the entrymen, and not to lessees or mortgagees.

In a 1977 decision the IBLA itself recognized that the lessor was the person in actual possession, and therefore holding the property, even though the land was being occupied and worked by a lessee. Alaska Placer Co., 84 I.D. 990, 998-1001. Alaska Placer

involved mining claims, but the applicable principle of property law remains the same.

The meaning of "hold", as interpreted by the government in these cases, was by no means clear. No regulation of the Department interpreted "hold" as including leases and mortgages. When the Department finally decided that the holding limitation applied to leases and mortgages, in fairness it should have notified these entrymen of that interpretation and given them an opportunity to conform to it, before resorting to the drastic remedy of forfeiture. That is what Judge Anderson attempted to do in the Sailor Creek case. The entrymen filed the divestiture documents required by his decision, but the Ninth Circuit, taking the view that violation of the statute left the Secretary no choice but to order cancellation of the entries, overruled Judge Anderson.

We now ask that Congress grant to these entrymen the opportunity that was denied by the courts through a very strict interpretation of the law, to bring themselves into compliance with the new interpretation of the Desert Land Act, and to fulfill the statutory requirements of that Act as now interpreted, so that they finally can receive title to the land in their entries.

These entries are important to the local community. Units of local government, including Elmore County, the City of Glenns Ferry, the Glenns Ferry Highway District and the Glenns Ferry

School District, have been furnishing essential governmental services to these lands and to the people who work and live there, for nearly 20 years. During that time these units have not received any ad valorem tax support from the land.

Many local businesses depend on the people who work at Sailor Creek, and depended on those who worked at Black Mesa, for a market for the goods and services they sell. Several years ago the Union Pacific Railroad Company removed its crew base from Glenns Ferry, which produced a severe adverse effect on the local businesses. Loss of business from Black Mesa, which has been out of operation since the fall of 1981, except for about 500 acres of deeded land that is being farmed this year, has already had an effect on the local businesses, and loss of business from the closure of Sailor Creek would further harm the communities of Glenns Ferry, Hammett and Mountain Home.

When the Indian Hill case was concluded in 1977, the BLM insisted that the irrigation system be removed. The irrigation systems for Sailor Creek and Black Mesa are in place and are operational. To cancel the entries and require removal of those systems would result in a substantial and unwarranted waste of energy and resources. It also would cause significant loss of revenues to Idaho Power Company, which supplies electricity to run the pumps that deliver water for irrigation of the entries.

In conclusion, the entrymen at Sailor Creek and Black Mesa

are asking only that they be given what seems to them to be a fair opportunity to comply with the new interpretation of the Desert Land Act. They are not asking that the government convey title to them without further compliance with the cultivation and irrigation requirements of the law, even though under the contract theory applied in the Thompson case, they probably would be entitled to receive patents without further performance or proof. This is not the first time that relief of this sort has been required under the Desert Land Act. In 1910 Congress passed a bill for the relief of desert entrymen in Imperial County, California. The 1910 legislation was necessary because fraudulently made entries had been assigned to innocent purchasers, many of whom invested considerable sums in development of the land, and the entries technically were subject to cancellation because of the fraud of the original entrymen, even though the assignees had no knowledge of the fraud. The circumstances are explained in the Senate Report (No. 423), a copy of which is attached, at page 4. It is noteworthy that Mr. Oscar Lawler, the Assistant Attorney-General assigned to the Department of the Interior, who testified at the Senate hearing on the 1910 bill, apparently regarded the holding limitation as applying to any person who would "hold by entry or assignment." This statement appears at page 10 of the committee report. In effect, he was saying what the Director ruled in his 1964 decision, that the holding limitation

applies only to the original entryman or to someone to whom he has assigned his title to the entry. Just as the 1910 legislation was a significant public service to the entrymen involved and to Imperial County, California, passage of S. 482 would grant fair treatment to these entrymen and would result in a significant public benefit to Elmore County and to the State of Idaho. We sincerely urge the Subcommittee to take favorable action on this bill.

Thank you again for your consideration of this matter.

Respectfully,

William F. Ringert
599 West Bannock Street
P. O. Box 2773
Boise, Idaho 83701-2773



UNITED STATES
DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

Idaho State Office
P. O. Box 2237
Boise, Idaho 83701

IN REPLY REFER TO:

10-LAM:2323

TO	IN	DATE
76d	copy	
115	MLM	APR 20 1964

Memorandum

To: Regional Director, Bureau of Reclamation

From: State Director, Bureau of Land Management

Subject: Release of Reclamation withdrawn lands in the Mountain Home Division, Snake River Project, Idaho.

Your draft letter to the Commissioner of Reclamation, submitted by your letter of March 26, concerning withdrawn lands in the Mountain Home Area, has been reviewed and discussed with members of your staff. With minor changes suggested at meetings with your staff, we believe your letter accurately portrays a situation with respect to desert land entries and related activities. We are keenly aware of and concerned over the possibility that some of these group developments taking place along the various reaches of the Snake River may not develop the area for agricultural uses to its full potential. If a small group of desert land applicants attempts to develop a certain basin and actually cream the heart out of the area, it may leave fringe areas which could otherwise be made feasible to develop had they been tied into a larger group operation whereby the costs could be spread equally among all the acres in the development. The Bureau of Land Management is responsible for making an economic determination on these group filings. This becomes a very difficult matter to decide with the limited BLM staff and facilities such as soils laboratories, etc., to make a sound decision. Therefore, we propose a close working relationship with the Bureau of Reclamation to obtain from you facts that may have already been developed pertaining to an area previously considered for a Federal reclamation project. Even with this precaution, however, full development of some of these basin areas may not materialize.

A Bill (H.R.8070) for the establishment of a Public Land Law Review Commission to study existing laws and procedures relating to the administration of public lands, is now pending in Congress. This Bill has passed the House and is awaiting action in the Senate. If this Bill is enacted, the Desert Land Act regulations and other public land laws, I am sure, would fall within the scope of the Commission's review. I believe a comprehensive review of the laws and regulations is needed to

determine the extent of revisions necessary to meet current and future needs. Because of this, we believe that your recommendation that the withdrawn lands within the Initial Butte area be restored, should be deferred pending the following considerations:

- (1) The possibility, as mentioned above, of the establishment of the Public Land Law Review Commission leading to an up-dating or revision of laws affecting the development of such lands.
- (2) The possibility of the Department tightening or revising the desert land regulations to more clearly spell out and prevent executory contracts and loss of control by entrymen through cooperative-type farm practices.
- (3) By awaiting the outcome of the Land Law Review Commission, if established, and/or Departmental study of the regulations, it would also provide time to evaluate the success or failure of the present group developments allowed or pending on public lands not withdrawn in this stretch of the Snake River.

John T. Feltner

Attachment: Map w/legend



IN REPLY
REFER TO: 105

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
REGIONAL OFFICE, REGION I
BOX 937, BOISE, IDAHO

JUN 15 1964

To: Commissioner
Attention: 400, 700

From: Regional Director, Boise, Idaho

Subject: Release of Reclamation withdrawn lands in the Mountain Home Division, Snake River Project, Idaho

In recent months we have received many inquiries concerning the policy of the Bureau of Reclamation in respect to restoration of specific areas of public lands in the Mountain Home desert area generally along Snake River, now held under Reclamation withdrawal. Private groups and individuals want to obtain these public lands under provision of the Desert Land Laws, and to develop them for agriculture, generally through pumping from the Snake River.

The most recent correspondence to your office on this general subject was our letter of April 30, 1963, and your teletype reply of June 17, 1963 (W-BE-211). The matter was discussed with Messrs. Palmer and Stamm in Boise on February 11, 1964. At that time we indicated the desirability of guidance from your office and the Department as to the policy to be followed in this matter. It was suggested that we provide you background information to serve as a basis for the establishment of such policy.

In consideration of the problem we have collaborated with the local office of the Bureau of Land Management. The Boise personnel of that agency are in general agreement with the outline of the situation and suggest some actions presented in this letter. A copy of an April 20, 1964, letter from the Bureau of Land Management presenting its ideas to us is enclosed. It is our understanding that information similar to that which we are sending you will be transmitted to the Washington Office of the Bureau of Land Management. 1

The Initial Butte Unit and a portion of the Long Tom Unit, Mountain Home Project, are the areas of prime concern. Approximately 160,000 acres of Reclamation withdrawn lands are involved. Of this, some

105,000 acres are in the Initial Butte area and the remainder in or adjacent to the Long Tom Unit. Currently, requests for restoration cover about 10,400 acres--all within the Initial Butte area--and inquiries have been made concerning other acreages within the Initial Butte area. There have also been inquiries made concerning restoration of parts of the withdrawn area in the Long Tom Unit. Some 3,000 of the 10,400 acres are covered by requests of adjacent landowners or from persons residing in nearby areas who are seeking additional lands to supplement present holdings in the area. The balance of about 7,400 acres is covered in requests initiated by promoters sponsoring project-type developments. These developments range up to several thousands of acres in size. The enclosed map depicts the withdrawn lands and the areas requested to be restored.

The Reclamation withdrawals in the Initial Butte and Long Tom Units were made in conjunction with the investigations which culminated in the Regional Director's reports of May 1949 on the Payette Unit, Mountain Home Project; and February 1959 on the Garden Valley Division, Snake River Project. The plans presented in these reports proposed, in part, that the Initial Butte area of the Mountain Home desert be served by diversion from the Payette River into the Boise River Basin and then diverted from the Boise River to the Initial Butte area.

The present plan for the development of the Guffey, Long Tom, and Hillcrest Units, Mountain Home Division, Snake River Project, does not include a Payette River diversion. In the general Mountain Home area, only the Long Tom Unit will be developed under the present plan through exchange of Snake River water for Boise River water. Future development of the Initial Butte area would be later in time and would require diversion from the Payette River.

Under ultimate development of the full land and water potentials of the Snake River Basin, it is contemplated that the Initial Butte area be irrigated by diversion from the Payette River, and that the Snake River waters would be used for future development of lands on the south side of the Snake River, generally upstream from the Mountain Home area.

So far as we know, the Reclamation land withdrawal in the Initial Butte area is the only long-range, large-scale public land withdrawal

in this region of potentially irriable lands except for the withdrawals relating to the authorized Columbia Basin Project. Even here there is some difference, since the Columbia Basin Project is authorized, whereas an investigation of the feasibility of the Initial Butte Unit of the Mountain Home Division is not even included in our current six-year General Investigations Program.

Current private development of public lands along the Snake River not covered by Reclamation withdrawal is proceeding under provisions of the Desert Land Act. The private developments apparently foresee no difficult problems in putting together a project-type development as contrasted to individual developments. The project-type developments are taking place along the Snake River from Hagerman, Idaho, downstream to the area near Malba, Idaho. The size of the sponsoring groups range from ten to as high as fifty applicants per group (see the attachment to the enclosed Bureau of Land Management letter). Each project-type development proposes the installation of a joint pumping plant on Snake River to provide for the project area. In addition, there are some applications involving developments in the same vicinity by drilling wells.

The group approach is somewhat new in Idaho, and there have been very few such group enterprises developed and operated under the Desert Land Act in the past. We do not fully understand the financial arrangements for these private developments; however, in some cases the developers' end objective appears to be to obtain the public land and to use it as a basic source of security to finance the development.

Apparently in some instances these group developers have selected or handpicked many of the individuals who later became the desert land entrymen. Quite often the promoters are interested in the aspects of the enterprise as it relates to selling pumping equipment, machinery, pipe, and sprinkling equipment or energy to operate the pumps, and the promoters are the prime force in putting the enterprise together.

The actual farming is on a large scale and in some cases is done by contract or a long-term lease. The promoters seem to have no question but that their proposals for setting up an irrigation development will fit into and comply with the Desert Land Act administered by the Bureau of Land Management.

Although residence on and personal development of the land is not specifically required by the Desert Land Act, it is understood that many of the desert land entrymen will not establish residence on the lands to be farmed and may not be engaged in the farming activity personally. Thus, the lands will be included in group or cooperative farming operations.

The promoters recognize that private development can be achieved much more quickly than Federal development of the lands. There is no doubt that Federal development of all the area in question could not be achieved for many years in the future. The promoters and other interests visualize a much more rapid stimulation of the local economy and talk of gains to be realized by the community by getting the privately-developed lands on the tax rolls at the earliest opportunity.

There appear to be some drawbacks to the private developments which should be considered. High pump lifts and expensive pumping equipment and costs are involved, and large-sized corporate-type farms are required to assure repayment of capital investment with interest and provide a profit. There is some question in our minds whether the original entrymen on some of the developments will be able to retain ownership of their desert land entries. This whole procedure certainly defeats the concept of the family-type farm ownership and possibly long-range stable family-type farm economy which are cornerstones of the Federal Reclamation program.

The Dry Lake development, within the Guffey Unit area, is typical of the large-scale operation necessary to assure success. The enclosed photograph clearly demonstrates the lack of family homes and buildings in this area, and the extensive type of farming that is necessary. This is in contrast to much of the remainder of the Boise Valley where family-sized ownerships and operations predominate.

A pamphlet concerning one of these large-sized private developments recently constructed in the Sailor Creek area on the south side of Snake River in the Glenns Ferry area is enclosed. This pamphlet, prepared by the Idaho Power Company, gives a concise description of the development.

Naturally, only the choice lands, normally in close proximity to the river or groundwater supply, as the case may be, are selected out of a much larger area for private development. The development of such

lands lessens the justification and feasibility for future development of the much larger remaining land areas of which the privately-developed lands would be but a small part.

Another area of considerable concern, particularly in view of recent experience, is the pattern of development that can be expected following restoration of the lands and their disposal under the desert entry laws. The present requests for restoration in large part have been made by persons or on behalf of persons who are already large-scale landowners or are persons of affluence looking for additional investment opportunities. As stated above, the developments contemplate large-scale farming enterprises without any resident family landowners and attendant community facilities. Also, as indicated, the developments generally are confined to fringe areas close to the Snake River at places where there is a sizable body of the best of row crop lands. Later full development of the area which would incorporate the lower class lands, the higher pump lifts, the drainage works necessary for the complete development of the land and water resources, will thus not have the participation of these good lands in cost sharing. The type of development that appears to be emerging from the present pattern under the Desert Land Act entries is in marked contrast to the previous disposals of public land on the Snake River under the Carey Act and under the reclamation programs through which existing irrigated areas were made available for project settlers of modest means to create new opportunities for family farm living.

In the Dry Lake area, as indicated above, where much of the land has already been developed by non-federal interests, the land ownership pattern was such that public lands were a decided minority of the lands within the development and were scattered in isolated tracts. In contrast, in the areas of the Long Tom and Initial Butte Units, public lands predominate.

We understand that private and state lands within the Initial Butte area are being acquired by promoters at prices well above any value such lands may have for dry-land grazing uses. We also understand that there is some competition among the developers for control of the more desirable locations on which there is a good site and foundation for a pumping plant which could serve a solid block of Class 1 land close to the river.

There are tens of thousands of acres of public lands south of the Snake River which have not been withdrawn for Federal Reclamation development. Much of this area also has an irrigation potential and some parts are presently being developed. Persons desiring restoration of lands north of the river fail to see why we should be concerned about retaining an area such as Initial Butte in a withdrawn status and at the same time not pay much attention to the public lands south of the river.

How far we should go in refusing the release of Reclamation withdrawn lands is a most difficult question. We do not wish to be accused of blocking expansion of the local economy, since we cannot assure quick future development through our Reclamation program. However, we feel we have some responsibility to assure orderly and stable irrigation development to benefit the maximum number of people.

Federal Reclamation development of the 105,000 acres in the Initial Butte area probably will not be realized for many years in the future. Consequently, as far as Reclamation is concerned, we may be in a poor position to resist the restoration of this area so that it may be treated in the same manner as other public lands, such as those on the south side of the Snake River. On the other hand, the Bureau of Land Management desires that the Initial Butte Unit area be deferred for several reasons. These reasons are contained in the BLM letter of April 20. A sketch attached to the BLM letter indicates the requests being received for desert land entries in the stretch of the Snake River discussed herein.

The Long Tom Unit is designated to be developed at a much earlier date than the Initial Butte Unit and feasibility studies are now essentially completed. Even so, some of the Long Tom Unit lands probably would not be irrigated under the Federal Reclamation program for some fifteen years in the future. Thus it may be suitable to restore some of these lands that may be desired for private development. This would be possible since there are other irrigable lands within the general area that could be substituted in the Long Tom Unit plans for any lands restored. In this way the size of the Federal development now contemplated could be maintained. No doubt BLM would desire that restoration of these lands be deferred for the same reasons expressed in its April 20 letter concerning the Initial Butte area.

We have made an effort to state the various ramifications of the problem as we see them. It would appear that the question of what to do about the withdrawn lands needs consideration not only by your office but the Washington office of the Bureau of Land Management and perhaps other interests within the Department of Interior. Any decision that is made needs full support of all involved within the Department because if it is determined that all or a part of the land not be restored, we assume those interested in the restoration will make an effort to reverse the decision.

Since individuals desiring restoration are pressing for an early decision in regard to this matter, we would appreciate your consideration of the discussion presented above with the thought that the matter might be resolved in the relatively near future.

(Signed) H. T. Nelson

Enclosures

Copy to: Bureau of Land Management, Boise, Idaho
Chief Engineer, Denver, Colo.
Project Superintendent, Boise, Idaho
Area Engineer, Boise, Idaho
(w/encls to each)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

In reply refer to:
722c

Idaho 012234, 012235,
012241, 012242,
012243, 012244,
012299, 012342,
012343, 012349

Certified Mail
Return Receipt Requested

DECISION

AUG 14 1964

Raymond T. Michener
Wallace Reed
Marjorie K. Michener
Joseph L. Nielsen
Robert R. Schwarze
Myrtle M. Reed
George L. Crapo
Norma E. Barnes
Charles E. Barnes
Blaine L. Carn

Desert Land Entries

OFFICE OF THE SOLICITOR
FIELD SOLICITOR
BOISE, IDAHO

AUG 17 1964

Contest Dismissed

This is a contest brought by the Manager of the Boise Land Office against ten desert land entries in the State of Idaho. The entries are as follows:
Idaho 012234, Raymond T. Michener, SE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, Sec. 5, and NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 8, T. 6 S., R. 8 E., B. M., 320 acres; Idaho 012235, Wallace Reed, NE $\frac{1}{4}$, Sec. 9, T. 6 S., R. 8 E., B. M., 320 acres; Idaho 012241, Marjorie K. Michener, SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 4, T. 6 S., R. 8 E., B. M., 200 acres; Idaho 012242, Joseph L. Nielsen, S $\frac{1}{4}$, Sec. 9, T. 6 S., R. 8 E., B. M., 320 acres; Idaho 012243, Robert R. Schwarze, S $\frac{1}{4}$ S $\frac{1}{4}$, Sec. 10, and NE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 15, T. 6 S., R. 8 E., B. M., 320 acres; Idaho 012244, Myrtle M. Reed, SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ S $\frac{1}{4}$, Sec. 10, T. 6 S., R. 8 E., B. M., 280 acres; Idaho 012299, George L. Crapo, SW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, Sec. 15, T. 6 S., R. 8 E., B. M., 320 acres; Idaho 012342, Norma E. Barnes, SE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 7, and W $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 8, T. 6 S., R. 8 E., B. M., 320 acres; Idaho 012343, Charles E. Barnes, SE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 8, and NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 17, T. 6 S., R. 8 E., B. M., 320 acres; Idaho 012349, Blaine L. Carn, NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 17, T. 6 S., R. 8 E., B. M., 320 acres.

The entries are situated along the Snake River in T. 6 S., R. 8 E., Boise Meridian, in the vicinity of Hammett. The lands on which the entries have been made are on a bench which rises approximately 400 feet above the river. In order to irrigate the lands, it is necessary to pump water from the Snake. This has been accomplished by means of an expensive system of pumps, ditches and sprinkler pipes, installed for the entrymen by third parties pursuant to several agreements hereinafter discussed. It appears from the record that the entrymen have succeeded in reclaiming the lands and that they have met the irrigation and cultivation requirements of the Desert Land Act.¹

¹ Act of March 3, 1877, 19 Stat. 377, as amended, 43 U.S.C. § 321 et seq. (1958).

The first charge brought against each of the contestees is as follows:

The desert land entryman has granted to others not qualified to hold desert land entries the right to develop and farm the public land in his entry under various long-term contractual agreements, thus avoiding the assignment provisions of the Desert Land Act.

This charge is, in effect, that the arrangements between the entrymen and Hoodco Farms, Inc., are tantamount to an assignment of the entries by the entrymen to Hoodco Farms, Inc. If this be true, the arrangements in question are contrary to the statute⁷ which provides that:

No assignment after March 28, 1908, of an entry made under sections 321-323, 325 and 327-329 of this title shall be allowed or recognized, except it be to an individual who is shown to be qualified to make entry, and such assignments may include all or part of an entry; but no assignment to or for the benefit of any corporation or association shall be authorized or recognized.

An assignment is a transfer or setting over of property, or some right or interest therein, from one person to another and, unless in some way qualified, it is properly the transfer of one's whole interest in an estate, chattel, or other thing. Hunter-Wilson Distilling Co. v. Forest Distilling Co., 84 F. Supp. 996, 1000 (D. C. Pa., 1949); Morton v. Thornton 259 N. C. 697, 131 S. E. 2d 378, 380 (1963); and see other definitions collected at 4 Words and Phrases, "Assignment."

The statute, supra, prohibits assignments of entries to corporations. By definition, what is prohibited is the transfer of the entryman's entire interest in the entry. On close analysis the agreements between the parties in the present case do not effect such a transfer. The entrymen have executed notes and mortgages on their entries. In addition, they have agreed to put the mortgages in possession and have pledged their water rights to the mortgagees. Under Idaho law mortgages are considered to be liens, rather than conveyances.⁸ The Department has held that, in States where mortgages are not considered to be conveyances, the mortgagee is not an assignee of the entryman. Thomas E. Jeremy, 24 L.D. 418, 420 (1897). This being so, it can hardly be maintained in the present case that such notes and mortgages constitute transfers of any, let alone the entire, interest of the entrymen. In fact, such mortgages are expressly sanctioned by the Departmental regulations, 43 CFR § 2226.1-3(d) (Supp. April 1, 1964), and by the United States Supreme Court. Rafemann v. Gross, 199 U. S. 342, 345, 347 (1905).

⁷ Act of March 28, 1908, c. 112, § 2, 35 Stat. 52, 43 U.S.C. § 324 (1938).

⁸ I.C.A. § 45-906 (1940); Hannah v. Vengel, 19 Idaho 796, 116 P. 115, 116 (1911); John Hancock Mut. Life Ins. Co. v. Girard, 57 Idaho 190, 64 P. 2d 254, 262 (1937); 5 Tiffany, Real Property, § 1330 (3d ed. 1939).

Under the terms of the specific agreements herein considered, the entrymen have entered into a contract with Hoodco Farms whereby Hoodco Farms may farm the lands for an indefinite period up to a possible twenty years. This farming arrangement may be terminated by either party, as follows. Each entryman may terminate by paying off his note; Hoodco Farms may terminate, at its option, at any time after it has developed the land sufficiently to enable the entrymen to meet the reclamation requirements of the Desert Land Act; and finally, the arrangement, if it should continue so long, will terminate automatically after twenty years by reason of the note then being fully paid. Such an arrangement clearly can be no more than a lease. Indeed, since Hoodco Farms' interest in the land arises from a mortgage, coupled with a development contract, its interest does not appear to attain even the status of a lease, in view of the rule that where the mortgagee is in possession, his interest is that of a lien securing the mortgage debt, and not a real property interest.⁹ Certainly, the granting of an interest which is in the nature of a leasehold, or lesser interest, cannot be construed as passing the entryman's entire interest in the entry.

Finally, the entrymen have pledged their shares of stock in Indian Hill Irrigation Company to Hoodco Farms. A pledge is a security transaction whereby possession of the pledged property passes to the pledgee but legal title remains in the pledgor. Accordingly, no interest in the entry passed to Hoodco Farms by virtue of the pledge of stock in the irrigation company.

From the foregoing, it must be concluded that the entrymen have not assigned their entries to Hoodco Farms, nor have they entered into agreements which circumvent the assignment provisions of the desert land laws. The mere fact that Hoodco Farms is in possession of the lands and controls them almost exclusively does not irresistably lead to the conclusion that there has been a de facto assignment.

The second charge brought against each of the contestees is as follows:

The desert land entryman, in order to have the lands of his entry developed by others, prior to patent, has entered into a legal obligation that permits the sale of his entry after patent has been issued.

This charge is concerned with the instrument, since terminated, entered into in February, 1963, between Messrs. Reed and Michener, as lessors, and Ore-Ida Motors, Inc., and Mr. Jolley, as lessees. The charge is, in effect, that an option to purchase was granted to the lessees by said instrument which constituted an executory contract to convey the lands after patent to Jolley and Ore-Ida Motors, Inc.

9

2 Glenn, Mortgages 1027 (1943). But see 1 Tiffany, Landlord and Tenant 325-326 (1912) holding that a mortgagee in possession is a lessee, although noting that the opposite has been held.

The regulations of the Department governing desert land entries provide in part that:

" . . . The provisions of law authorizing the assignment of desert entries, in whole or in part, furnish no authority to a claimant under said law to make an executory contract to convey the land after the issuance of patent and thereafter to proceed with the submission of final proof in furtherance of such contract. (34 L.D. 383) . . . 10

This rule is enunciated in Herbert C. Oakley, 34 L.D. 383 (1906), which is the case cited in the regulation. It was therein stated that the clear intent of the desert land law forbids recognition of contracts to convey after patent, irrespective of the time the contract was made and regardless of whether or not the original entry was made honestly and in good faith. The rule being clear, it remains to be seen whether the instrument in question, if enforceable, was an executory contract.

An examination of the instrument reveals that there is nothing therein constituting a present contract to convey the lands subsequent to patent. The instrument, insofar as its option provisions are involved (if, indeed, an effective option was granted by the instrument at all), was merely a continuing offer on the part of the lessors to convey or assign the lands to the lessees. It would become a contract only upon acceptance of the offer by the lessees; until then no contract obtained. The record is devoid of any evidence that the lessees ever accepted the offer. On the contrary, the record reflects that they did not. It would therefore appear that this instrument was not an executory contract to convey after patent.

A similar result was reached in Glen W. Jensen; Marcia R. Jensen, A-29067 (February 17, 1964), wherein an agreement was considered which provided that the developers of desert land entry should have the first option to purchase or lease the land. It was held in that case that this agreement did not constitute a commitment by the appellants to convey the land and therefore was not an executory contract to convey the lands after patent.

The third charge which has been brought against each of the contestees is that:

The desert land entryman has associated himself with other desert land entrymen to allow an association of persons to hold more than 320 acres of desert land prior to the issuance of patent.

10

43 CFR, § 2226.1-2(c)(2) (Supp., April 1, 1964).

It is provided in part by section 7 of the Desert Land Act ¹¹ that:

" . . . no person or association of persons shall hold by assignment or otherwise prior to the issuance of patent, more than three hundred and twenty acres of such arid or desert lands"

The question presented here is whether Hoodco Farms, Inc., by virtue of the agreement between it and the entrymen, "holds by assignment or otherwise" more than 320 acres of desert lands prior to patent.

In this connection, it should be noted that prior to the enactment of the above-quoted provision, Congress had already enacted a statute providing that no person entering upon the public lands with a view to occupation, entry, or settlement, under any of the land laws should be permitted to acquire title to more than 320 acres of land.¹² These two acts must be read in pari materia.

In order to ascertain what is intended by these statutes, it is necessary to realize that neither of them operates upon desert land entries subsequent to the patenting of such entries. Both of them relate to entries. The earlier statute enunciates the general principle that no person shall be permitted to acquire title to more than 320 acres, and the later statute applies that principle specifically to desert land entries. The 1891 act further enunciates the concept that, prior to patent, no person or association of persons, shall by assignment or otherwise hold more than 320 acres. In other words, no person who, by assignment or other arrangement tantamount to an assignment, has become in effect an entryman may hold more than 320 acres of desert land. The limitation is aimed at persons seeking to acquire title from the United States, i.e., entrymen and their assignees. Thus, this provision of the law is applicable only where the holdings of any entryman or any entryman's assignee are being scrutinized.¹³ It does not apply to persons whose interest in the land is less than the entire interest of an entryman.

In the foregoing discussion of the first charge, it was shown that Hoodco Farms' interest does not derive from an assignment. Since Hoodco Farms is not in the position of an entryman, the acreage limitation does not apply to it and the third charge cannot be sustained.

¹¹

Section 7 was added to the 1877 act (19 Stat. 377) by section 2 of the Act of March 3, 1891, 26 Stat. 1095, as amended, 43 U.S.C. § 329 (1958).

¹² Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. § 212 (1958).

¹³ Stuart v. Burke, 32 L.D. 646 (1904).

The fourth and final charge brought against each of the contestees is that:

The desert land entryman has not made a bona fide entry with the intent to reclaim the lands of his entry and he has allowed himself to be used by others who actually control the development and operation of the entry.

This charge is an attack on the good faith of the entrymen. In support of the charge, the following allegations have been made by the contestant.

- (a) The entrymen have developed their entries in a manner different from that set forth in their original declarations.
- (b) The entrymen have not developed their entries with their own capital and labor.
- (c) The entrymen have never occupied their entries.
- (d) Hoodco Farms has complete control of the entries.

From these allegations the contestant concludes that the entrymen are merely dummies who are holding their entries for speculation.

With regard to the first allegation, there is no requirement by statute of regulation that the entryman may not deviate from his original plan of development. Such a requirement would be unrealistic and unnecessary. If at the time of final proof the entryman can demonstrate that he has constructed a satisfactory irrigation system and has reclaimed the land, then the fact that he has not followed his initial plan is unimportant.

The second allegation misconstrues the requirements of the law. The regulations expressly recognize the right of the entryman to seed outside capital in that he may mortgage his interest in the entered lands.¹⁴ And, with respect to labor, the entryman is not required to perform personally the labor of reclaiming the lands but may employ others to do such work. Saunders v. Dutcher, 166 Cal. 353, 143 P. 599 (1914).

The short answer to the third allegation is that there is nothing in the desert land laws or the regulations thereunder requiring occupancy on the part of the entryman.

With regard to the final allegation, the present control of the entries by Hoodco Farms is exercised pursuant to a mortgage coupled with a development contract. If, as has been held above, these legal arrangements are unobjectionable, the control exercised pursuant thereto must likewise be unobjectionable.

¹⁴

43 CFR § 2226.1-3(d) (Supp. April 1, 1964).

Boise, Idaho

420

DEC 23 1964

AIR MAIL — SPEEDLETTER

To: Director, Bureau of Land Management, Washington, D.C.
 Commissioner, Bureau of Reclamation, Washington, D.C.
 Attn: 701

From: State Director, Bureau of Land Management, Boise, Idaho
 Regional Director, Bureau of Reclamation, Boise, Idaho

Subject: Study of relationship of small private reclamation projects
 to Federal reclamation and agricultural programs

The local joint study team has completed its report and three copies thereof, entitled "Joint Water-Land Development Study", are enclosed. Because of the detailed coloring and hatching on the study area map, identified as Exhibit "A", it was concluded that only three copies of the report should be furnished at this time. One copy is intended for the Secretary's office, and one for each of your offices. The copy for the Secretary's office is being furnished to the Director, Bureau of Land Management. Later, additional copies, in the quantity which you desire, will be provided. Complete copies are being furnished the office of the Chief Engineer, as well as the local BLM State Director's and Regional Director's offices.

Mr. Rollo E. Chandler and Mr. J. Karl Lee of the Washington office joint study team met with the local study team and other representatives of our offices, here in Boise, on November 24, 1964. The three basic questions posed in Secretary Udall's September 2, 1964, memorandum were discussed with a view toward developing appropriate conclusions and recommendations for the local report. The enclosed report, Part IX, includes these conclusions and recommendations.

During the November 24 discussion it was pointed out that the local team had included in its draft report an additional part relating to "Economic Aspects." Because of the time element involved this could only be a reconnaissance type report and some apprehension has been expressed as to the propriety of including it in the report. It was concluded, therefore, that this material should not be included in the report proper, but be transmitted as supporting data for use in the Department only. Three copies are enclosed with the report.

Field Solicitor Burpee has participated in some of the discussions concerning this matter and it is his understanding that to the extent there is to be any formal opinion on the legal problems involved such opinion will be issued from the Solicitor's office in Washington..

/s/ Joe T. Fallini

State Director
Bureau of Land Management

H. I. Nelson

Regional Director
Bureau of Reclamation

Enclosures (2 to BUM)
(1 to B/R)

Copy to: Chief Engineer, Denver, Colorado
State Director, BUM, Boise, Idaho
(w/c of encl. to each)

cc:
Project Development Engineer, Boise, Idaho
Area Engineer, Boise, Idaho
Field Solicitor, Boise, Idaho
RO 424 (Welch)
(w/o encl.)

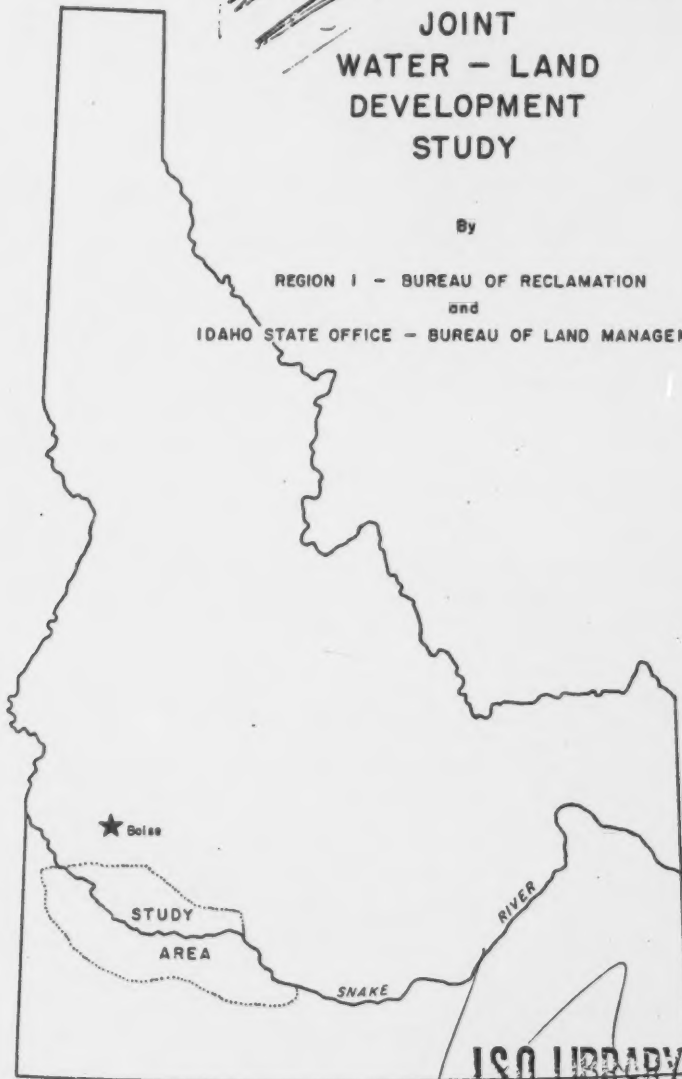
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Box # 1

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**JOINT
WATER - LAND
DEVELOPMENT
STUDY**

By

REGION I - BUREAU OF RECLAMATION
and
IDAHO STATE OFFICE - BUREAU OF LAND MANAGEMENT



BOISE, IDAHO

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DECEMBER 1964

BUREAU OF RECLAMATION - BUREAU OF LAND MANAGEMENT
JOINT WATER-LAND DEVELOPMENT STUDY

I. PURPOSE OF STUDY

Idaho has large quantities of both surface and ground-water available for domestic, industrial, and agricultural uses. Considerable portions have already been developed through Federal and non-Federal projects; however, there still remain significant quantities of undeveloped water and land resources.

The availability of agricultural lands and water, availability of pumping energy — both electrical and gas, lifting of the Bureau of Land Management moratorium on public lands and the restoration of a portion of the Saylor Creek Military Withdrawal led to the development of several private irrigation projects.

High-lift pumping to irrigate approximately 23,000 acres of private land in the Dry Lake area near Melba, Idaho, started about three or four years ago. The apparent success of this new irrigation resulted in proposals for similar developments along other parts of the Snake River. Since development of the Dry Lake area, the Bureau of Land Management has received more than 700 desert land applications in an area from Salmon Falls Creek on the east to near the Oregon border on the west. These applications involve lands close to the Snake River.

The State of Idaho, basically an agricultural State, if now experiencing the impact of the development of several projects in this Snake River area by private enterprise. These developments, in some instances, have taken place on private lands such as Dry Lake. However, many public domain lands not under Reclamation withdrawal are being developed under the authority of the Desert Land Act. Projects being developed are the Indian Hill, Sailor Creek, Cottonwood, and other smaller areas. These developed and several proposed private projects generally fall within an area where development opportunities have been recognized by the Bureau of Reclamation and are identified in the Upper Snake River Basin Report published by the Bureau of Reclamation and the Corps of Engineers in 1961, (copies of which are on file in offices of BR and BLM), as part of the Snake River Project and other projects; for instance, Mountain Home Division, Snake River Project; Bruneau and Wickahoney Divisions, Bruneau Project; Edgington Project and Indian Cove Project. These identified projects fall within three categories, defined as follows:

1. Potential Projects - Immediate Future. (Projects which have been studied by the Bureau of Reclamation and have possibilities for development within 5 to 15 years.)
2. Potential Projects - Intermediate Future. (Projects which may have had only very preliminary studies by the Bureau

of Reclamation but which have possibilities for development within 15 to 30 years.)

3. Potential Projects - Long Range. (Projects which have not been studied by the Bureau of Reclamation but have recognized development possibilities 30 or more years hence.)

The Guffey, Long Tom, and Hillcrest Units of the Mountain Home Division are included in a final feasibility report of the Bureau of Reclamation scheduled for completion during FY 1965. For purposes of this study these units are categorized as "Potential Project - Immediate Future." The Bureau of Reclamation plans to inaugurate a preliminary feasibility study of the Initial Butte Unit of the Mountain Home Division during FY 1966. In the circumstances, this unit is designated "Potential Project - Intermediate Future." The third category of lands is that involving the Bruneau and Wickahoney Divisions of the Bruneau Project, the Edgington Project and the Indian Cove Project. Only preliminary reconnaissance type investigations have been made by the Bureau of Reclamation as to these projects. Consequently, these projects are identified as "Potential Projects, Long Range."

The Bureau of Reclamation has withdrawn public lands in the areas of its potential Mountain Home Division, Snake River Project. As a consequence of the movement for private development of areas along the Snake River, the Bureau of Reclamation

has received numerous public inquiries as to the possibility of revoking certain of the Reclamation withdrawals and restoring the lands to entry.

The private developments pose several questions. The Idaho State Office of the Bureau of Land Management under date of May 13, 1964, forwarded to its Washington Office a staff study pointing out the developments taking place and the problems being encountered. At about the same time, the Regional Director of the Bureau of Reclamation, Boise, Idaho, submitted a report to the Commissioner of Reclamation concerning the advisability of restoring certain Reclamation withdrawn lands for the purpose of private development in contrast to longer-range Federal development.

To help resolve the questions and problems, the Secretary of the Interior, under date of September 2, 1964, directed the Assistant Secretary for Water and Power and the Assistant Secretary for Public Land Management to establish a joint Bureau of Reclamation-Bureau of Land Management Study Team to determine the facts and make recommendations.

The purpose of this study is to assemble and present facts and information directed toward the resolution of the question to the extent to which public lands in the study area should be developed as Federal Reclamation projects, or by private interests under the Desert Land Laws. In regard to this

problem the Secretary has posed three questions:

1. What public domain lands, both reserved and unreserved, are required for the proposed Federal Reclamation Projects?
2. What effect will the proposed private development have on the proposed project in terms of land and water?
3. Are large association or corporate farm types of private development under the Desert Land Act consistent with the spirit and objectives of that Act, and compatible with the acreage limitations of the Federal Reclamation laws?

VII. EXISTING AND PROPOSED PRIVATE DEVELOPMENTS

Within the study area there has been private irrigation for many years. This involves the lower reaches of the tributary streams and the fans and bottom lands near Snake River. These areas are covered generally in Part III. More pertinent to this study are the new pumping developments and the proposals for additional private irrigation on public land.

Five groups for project-type irrigation systems under the Desert Land Act have been allowed. These allowed projects are: Magic Water Company, Indian Hill, Sailor Creek, Cottonwood, and Sinker Butte Mutual Canal Company (Hill-Warrick). The Magic Water Company development was mainly completed several years ago. Two (Indian Hill No. 1 and Sailor Creek No. 1) are developed but have proposed enlargement of the facilities and extension of the land area under additional desert applications. The other two (Cottonwood and Hill-Warrick) are now in the process of development. Other project-type proposals are in various stages of planning. Some have essentially completed plans. Many are still incomplete as to engineering, organization or feasibility reports. Each of the groups is identified on the General Area Map, Exhibit A, and discussed herein as to the present status of actions pending before BLM.

The first three following groups involve applications whereunder the Sinker Butte Land Development Corporation is

the pond. Smaller natural gas engine powered pumps supply water to the lands through a sprinkler system. Complete cost and return data are not yet available to BLM. Observation of crops for the first two years indicate this agricultural development is successful. See pictures enclosed herein for further details.

Group No. 12 - Indian Hill Irrigation Company - No. 2

These seven applications are for lands to create an expansion of Group No. 11

Field work and classification favorable to entry have been completed. Allowances are withheld pending a decision on the propriety of corporate-type development.

The Indian Hill Irrigation Company will supply the water as in Group No. 11 through an extension of the existing system.

Based on the apparent success of Indian Hill No. 1, these lands would offer similar opportunities.

Group No. 13 - Sailor Creek Water Company - No. 1

This group is comprised of twelve allowed entries. Allowances were made during November 1963 to March 1964.

A brochure published by the Idaho Power Company and distributed at ceremonies when the pumping plant was started is included with this report.

These 12 entries are for lands located on the plateau above the left bank of the Snake River and southwest of Glenns Ferry, Idaho. The entrymen have signed lease-mortgage agreements and apparently do not directly participate in the daily management and operation. All of the land in these allowed entries is farmed as a single management unit by the Sailor Creek Water Company.

An electrically powered pumping plant on the river pumps water directly to the sprinkler heads about 625 feet above. The main irrigation pipe system is underground. The first year of crop production, 1964, is reported as excellent. See pictures enclosed herein for further details.

Group No. 14 - Sailor Creek Water Company - No. 2

These 72 applications are for a narrow stringer of lands located southeast of Group No. 13. They form an extension of Group No. 13 about three to four miles wide and twelve to fifteen miles long.

Field work and report are complete on most of the remaining lands proposed to be served by the Sailor Creek Water Company. Some of the later applications include lands within the Saylor Creek Experimental Range pasture. These will be rejected.

Most of these lands are suitable for agricultural development if adequate water can be supplied to the lands.

Crossing was a famous landmark and milestone and lies just below the bench on which these lands are located.

The historical values in this area have been studied by the National Park Service, Bureau of Outdoor Recreation, and the State of Idaho. Reservations to protect historical values in these and adjoining lands are contemplated.

Most of this area appears suitable for agricultural development.

No definite engineering plans for supplying Snake River water to these lands has been submitted to BLM. No feasibility study has been made of this group.

Group No. 16 - Cottonwood Mutual Canal Company

These 15 entries are located southeast of Glens Ferry on Black Mesa. The allowed entries comprising this group were allowed between January 10 and May 20, 1964.

The lands lie in a relatively solid block, and most have good suitability for irrigated agriculture. Lands are being broken and cropping is expected in 1965.

Water is to be pumped from the Snake River and supplied to the lands by the Cottonwood Mutual Canal Company. The lift is about 550 feet.

It appears that the project may be economically feasible through the project-type development.

VIII. LARGE PRIVATE FARM DEVELOPMENT ON PUBLIC LANDIn Relation to the Desert Land Act

It has been observed by the study team that most of the lands being privately developed under the Desert Land Act within the study area involve some sort of association or corporate type control. These corporate or association type farming operations involve the formal organization of groups of entrymen who organized for the purpose of establishing either a mutual water company or a corporation for the purpose of furnishing water to each of the entries. The desert land regulations recognize that as the more accessible and easily appropriated streams become exhausted and it becomes necessary to convey water often for very long distances from remote sources of supply, that more elaborate and expensive systems of irrigation works are required. The regulations further recognize that the cost of water rights is correspondingly increased and individuals consequently find it necessary to unite their efforts in various forms of cooperative enterprise in order to secure the necessary capital. Basically there is no major objection to the establishment of associations, companies or corporations for the purpose of installing pumping and irrigation equipment and furnishing of water to the applicants. However, problems do arise when the entrymen enter into questionable legal agreements whereby the associations, companies or corporations assume full responsibility for control of the individual units and take over the operations and

development of large areas under one farming operation. Although an applicant for public land under the Desert Land Act is responsible for completing the required reclamation improvements and performing the farming functions himself, he may employ others to do the required work.

In those instances where the entrymen have contracted away the individual control of their entries, it is the committee's feeling that such is inconsistent with the spirit and objectives of the Desert Land Act, which was enacted March 3, 1877, to encourage and promote reclamation by irrigation of the public lands through individual effort and private capital. Settlement and occupancy of the public land by the entryman was assumed to naturally follow when the lands had been rendered productive and habitable. The Act, however, does not require or provide that the entryman reside upon the premises. The desert land regulations permit the assignment of entries, but an assignee is required to have the same qualifications as an original entryman. Moreover, assignments involving more than 320 acres are prohibited.

The basic problem concerns the lease and mortgage arrangement entered into between the entryman and the developer to develop the properties, and whether such long-term arrangements do in fact transfer an interest in the entry. The committee is not attempting to resolve this legal problem. Proper legal safeguards are needed for maintaining individual control with

the entryman. The developments under a project system serve a useful purpose and encourage development of the arid lands of the west, and result in improved economic conditions in the area. As a step to clarify the situation, the Bureau of Land Management is currently requiring, before allowance of an entry, that the entryman certify that he has not nor will not make, prior to issuance of patent, any oral, written, implied or expressed arrangement, agreement or understanding with anyone to dispose of any or all of the lands included in his application except by assignment as provided by the regulations; further, that if the entryman executes any mortgage in connection with his entry prior to patent, such mortgage will be truly a security transaction to finance the irrigation and development of the land and that no mortgage or other contractual arrangement has been or will be entered into prior to patent merely as a device for corporate control.

Some of the entrymen and/or corporate developers are already large land holders and usually have considerable financial backing. Some of these entrymen are not in need of the entries for a livelihood, as such.

In Relation to the Reclamation Act of 1902

It is recognized that the Reclamation Act of 1902 was enacted to encourage farm home type operations wherein the homesteader was required to live upon the premises, which actually

served as his place of residence and provided a means for the support of his family. From an examination of the legislative history of the Reclamation laws, their strict land limitations, and indeed the fundamental purpose of the reclamation laws themselves insofar as irrigation is concerned, has been to encourage settlers to make their homes upon the land. It has been consistently demonstrated that the Congressional intent has been to maintain the applicability of the basic principle of acreage limitations on reclamation projects. The reasons repeatedly advanced in support of such legislative intent stem from recognition of (1) the objectives and benefits to the overall national economy which time and again have been apparent from the development of economically sound owner-operated family-type irrigated farms following Federal investments in reclamation project works; (2) a continuing desire to insure the accrual of direct benefits derived from the interest-free Federal funds providing for the construction of reclamation irrigation works and associated features to the maximum number of landowners practicable as represented by the many owner-operators of family farm enterprises; and (3) corollary to these, a desire to limit the amount of those Federal benefits derived by any single landowner. The individual owner-operated farm-type development contemplated under the Reclamation Act is not the type of development taking place on the large corporate-type operations. In some areas, however, large leasehold farming operations are taking place on Reclamation projects. In the past and, in some cases when this became a problem, restrictions were placed on leasing lands in Federal Reclamation Projects.

QUESTION NO. 3: ARE LARGE ASSOCIATIONS OR CORPORATE FARM TYPES OF PRIVATE DEVELOPMENT UNDER THE DESERT LAND ACT CONSISTENT WITH THE SPIRIT AND OBJECTIVES OF THAT ACT AND COMPATIBLE WITH THE ACREAGE LIMITATIONS OF THE FEDERAL RECLAMATION LAWS?

A. Desert Land Act

Conclusions

It is the view of the study team that large corporate farms involving loss of control by desert land entrymen are not consistent with the spirit and objectives of the Desert Land Act. The present trends are to larger mechanized farms.

Recommendations

It is recommended that the legal and/or policy problems involving corporate-type farms be resolved at the earliest possible date. It is recommended that desert land entries be allowed where lands are favorably classified in areas not under Reclamation withdrawal, but, adequate restrictions be imposed to prevent entrymen from divesting their control of the entries and, in effect, circumventing the assignment provisions of the Desert Land Act.

B. Reclamation Act

Conclusions

The study team believes that the current private development of lands within the study area under the desert land

laws is not compatible with the acreage limitations of the Federal Reclamation laws. This conclusion is based on the fact that the lands presently being developed within the study area are not family-type irrigated farms within the intent of the Federal Reclamation laws — rather they are large association or corporate farm types.

Recommendations

It is the recommendation of the Committee that the question of compatibility of these two Acts be referred to the recently organized Public Land Law Review Commission for the purpose of recommending appropriate corrective legislation necessary to provide compatibility for the development of public lands by the Department's two sister Bureaus — the Bureau of Reclamation and the Bureau of Land Management. In the interim, pending any revision of these laws, it is recommended that private development proceed as contained in this report.

COMMITTEE

BUREAU OF LAND MANAGEMENTBUREAU OF RECLAMATION

Orval G. Hadley
Orval G. Hadley

T. Torkelson
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Curtis R. Taylor
Curtis R. Taylor

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Edward C. Booker
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Wayne E. Peterson
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I CONCUR:

Joe T. Fallini
Joe T. Fallini
State Director
Bureau of Land Management

I CONCUR:

H. T. Nelson
H. T. Nelson
Regional Director
Bureau of Reclamation

Never to be used. Please protect it.

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C.

722
2499 Snake River area

Memorandum

February 9, 1965

To: Secretary of the Interior

From: Director, Bureau of Land Management
Commissioner of Reclamation

Subject: Small private reclamation projects and Federal Reclamation projects in the Snake River area.

Attached is a copy of a "Joint Water-Land Development Study" prepared by field officials of the Bureau of Reclamation and of the Bureau of Land Management in response to your request of September 2, 1964. We have studied the report and find that it does not by itself provide a basis for an answer to the three questions which you have raised. We have therefore prepared from other sources available to us additional information concerning the nature, scope, and development of (1) the agricultural situation along the Snake River and (2) the public policies involved. Consideration of all the information in the report and otherwise available to us leads us to make substitute recommendations for those contained in the report.

H. H. Brown Jr.

Acting Director, BLM

John E. Brown

Commissioner, Bureau of Reclamation

Recent Agricultural Trends along the Snake River

Shortly after the end of World War II (about 1948), interest in the development of both ground and surface waters in southern Idaho began to develop. As a result of this activity, approximately 600,000 acres of desert land have been developed in that area since that date. Originally, this activity was entirely associated with the development of either public (largely under the Desert Land Act) or private land by the use of ground water. Most of the ground water development has been associated with individual type farm operations.

In recent years, however, much of the new irrigation has been by development of Snake River water below Thousand Springs (Bliss, Idaho), by pumping to the river benches and terraces. Several factors seem to be responsible for the current interest in this kind of development. Both natural gas and electric service have been extended to most of the Snake River area below Thousand Springs making a source of comparatively low cost energy available. In addition, the technology of sprinkler irrigation has been further developed to the extent of making it possible to irrigate lands that were only recently considered nonarable for economic reasons under conventional methods of surface irrigation. An important change during this period has also occurred in the potato industry in Idaho. At the end of World War II, very few potatoes produced in the State were processed. However, at the present time some 70 to 80 percent of the State's production is processed and sold as canned, frozen, dehydrated, mashed, or french fried potatoes. Some of the processors contract in advance for potato acreage, thus assuring a definite market to the grower at a specific price for specified harvests.

During the 1964 growing season, southeastern and south-central Idaho had a wet, cold spring which delayed the planting of potatoes beyond the normal date. Furthermore, much of the area had a late spring frost and an early fall frost. Consequently the production in these two important production areas of the State was reduced substantially. Although the production in southwestern Idaho was normal, many of those potatoes were sold in the early market as unprocessed potatoes. As a result of the short crop in Idaho, as well as in one or two of the other producing areas, those processors who had not precontracted for potatoes to meet their commitments had to go onto the open market and compete with others for the limited potato supplies. As a consequence, potato prices in southern Idaho rose to a higher level than they had been at any time since World War II. At the present time, U.S. No. 1's are selling for something in excess of \$6.00 per 100-weight. Certified seed for the 1965 crop is almost impossible to buy. Because of the favorable market conditions for the 1964 crop and of the good prospects for favorable precontracting for 1965 potatoes, there is much demand for additional land to produce potatoes.

Desert land broken out of sage brush can be used without special treatment for the production of potatoes. However, after one or two crops, it is necessary to introduce rotations in order to control potato diseases which are carried over in the soil. A normal rotation includes potatoes

followed by small grain which is used as a nurse crop for alfalfa, two or three years of alfalfa, and back into potatoes. In this way, the soil borne diseases can be controlled and fertility of the soil can be maintained. Because of the necessity of following a rotation, the greatest profits can be expected the first year or two after the lands are broken out of sagebrush.

In recent years, potato farming has almost been completely mechanized. The most important innovation in this respect has been the development of potato combines which can be used for harvesting, particularly on the light-textured soils which are characteristic of southern Idaho. The use of this method of harvesting eliminates the hand picking which was common for many years.

This combination of circumstances has made it very attractive financially to put lands into potatoes. It will doubtless result in continuing applications for desert land entries. These opportunities for large, immediate return eliminate some of the entrepreneur's normal concern for the continuity of his operations. The soils in question are highly erodible being easily wind-blown, which would become a serious problem if the farms were abandoned. Abandonment or reduction in earning could result in demands for government funds for financing soil conserving practices.

Bureau of Reclamation Activities

The Bureau of Reclamation has been considering ways and means of irrigating the desert lands below the Thousand Springs since the passage of the Reclamation Act. Two river basin reconnaissance reports covering this area have been issued by the Bureau of Reclamation. The first of these was the Columbia River Report, issued in 1947, and the second was the joint report on the Upper Snake River Basin, issued in 1961. The Bureau of Reclamation has analyzed two basic potential project plans in the area north of the Snake River, generally known as the Mountain Home Desert. The first of these involved a diversion from the Payette River to supplement water supplies from the Boise River to be used as a means of irrigating about 200,000 acres in the desert. The second plan, known as the Guffey, Hillcrest, and Long Tom Units of the Snake River Project, involves a combination of Boise River water, Snake River water, and Boise project ground water to irrigate a smaller acreage in that general area. A report on this plan is now under revision to eliminate the use of Boise project ground water. The report is expected to be released within the next six months, and should be available for consideration by the Congress within the next two years.

An investigation of an area lying to the west and north of Mountain Home, which is known as the Initial Butte Unit, is scheduled for study starting in 1966 as part of the Garden Valley Division. The Initial Butte land will involve importation of water from the Payette basin. The importation of water is essential to reduce the high annual operation and maintenance costs that would be associated with the direct pumping of Snake River water to the elevations required. Proposals for projects south of the River have been examined. However, they have been set aside for the time being in favor of those north of the River, which promises to be more desirable.

Reclamation Withdrawals

Plans now are to continue the Hillcrest, Cuffey, and Long Tom Unit withdrawals at least until the report is completed and the Congress has had an opportunity to consider it. As to the Initial Butte Unit, there is little, if any more, reason to be optimistic now about the early development of that area under the Reclamation Act than existed twenty years ago when the proposal was first reviewed by the Bureau of the Budget. There is a present demand for those lands adjacent to the river which can probably be developed through private means at \$200 to \$400 per acre. These lands adjacent to the river are the best lands of that unit. Their development by private individuals under desert land entries would in effect constitute a "high grading" of the Initial Butte lands. Such development would undoubtedly reduce the justification and delay the possibility of feasibility for the development of the remaining lands. However, it cannot be concluded that the development of such lands through private means now would permanently make it impossible to develop the remaining area. Studies completed some years ago indicated that the development of the Initial Butte lands by the Federal Government would result in a cost in excess of \$1,000 per acre. Operation and maintenance costs associated with these lands are expected also to be relatively high for Reclamation projects. Under present price relationships, if these lands were developed as Reclamation projects, the water users on the better lands would be able to pay about \$6 to \$7 a year on construction costs. In the customary 50-year period, this would amount to about \$300 to \$350 per acre, leaving a balance of at least \$650 per acre to be repaid through financial assistance from power revenues. Such financial assistance will not be required in connection with the private development under the desert land entries.

In connection with this comparison, however, it should be noted that the private facilities would not be constructed to the same standards as used by the Bureau of Reclamation. Moreover, the private pumping facilities would require frequent replacement while those involved in the Reclamation plan, which is based on gravity flow and delivery of water, would require very little replacement.

There is also another significant difference. Private development would entail high annual operating costs, while those resulting from Federal development would be substantially lower. Thus, even though the cost of construction under the Reclamation plan promises to be substantially higher for the lands in question than would be involved in private development, when replacements and operating costs are considered, the costs under the Reclamation plan would be lower. Also, the private costs noted above would apply only to those lands adjacent to the river. The lands that are further back from the river would require higher pumping lifts and significant drainage facilities.

It is because of these differences that the Bureau of Reclamation has not adopted a plan for serving the Initial Butte lands involving pumping directly from the Snake River.

The major crops grown on these lands will be potatoes, alfalfa hay, small grains, corn for feed grain and silage, and irrigated pasture. Many of these lands are

adaptable to the production of specialty crops such as sweet corn seed, carrot seed, sugar beet seed, and peas, beans, and corn for processing. Since there is a limited market for such crops, they cannot be relied upon as a major source of repayment. Sugar beets will also respond very well on these lands, but the beet allotments have been limited and the future of that industry is speculative. If the allotments were increased and if additional processing capacity was provided, sugar beets would be a profitable enterprise for many of the new farms which are being developed on desert land. Dairy and beef cattle enterprises will be developed on many of the farm units. The above factors indicate that a more accurate consideration of the economics of the alternatives is necessary to determine with confidence the proper course of action with respect to the Initial Butte withdrawal.

Desert Land Act v. Reclamation Homestead Act

The Desert Land Act, enacted in 1877, and the Reclamation Homestead Act, enacted in 1902, although amended to some extent, are substantially in their original form. They were both originally enacted for operation within an economic and social environment which is now substantially changed.

Both laws were enacted to help effect the settlement of the arid West. However, the Desert Land Act did not require settlement on the land as a prerequisite to ownership. Settlement following cultivation was contemplated, perhaps not on the farm itself, but at least nearby. For a long time in our earlier history a belief existed that parts or much of the West was too inhospitable for isolated farm homes. This belief is reflected in the enlarged-homestead non-residence provisions for Utah and Idaho enacted in 1909 and 1910. The Reclamation Homestead Act, on the other hand, requires residence on the land.

To the extent that both laws contemplate settlement on or near the land, they are both out of step with the times. In that respect, they are destined to be ineffectual. Residence requirements cease with issuance of patent. The intent of the laws, thus, cannot possibly survive the strong and consistent urbanization currents of the times.

Both laws accept group development and management of the source of water. In the case of the Reclamation Homestead Act, the law provides for development by the Federal Government and management by the Government or the water users as a group. The Desert Land Act permits both individual and group development and management of the water supplies.

The two laws differ from each other as to certain phases of land development and cultivation. The reclamation law requires that the work be done under the personal direction of the entryman. The Desert Land Act is silent on this. It may be that the Congress assumed this would be the usual mode of operation. The Congress further separated the personal relationship of the entryman to his entry by permitting assignments after allowance and before development. The homestead laws do not permit assignments prior to acceptable final proof of development. In any event, whatever ties the Congress has made between the entryman and his entry, they are mandatory only until equitable title passes. Inevitably, they become meaningless when faced by contrary social and economic forces. In such circumstances, Congressional policy obtains only until the entryman comply with the minimum requirements of law.

The two laws differ as to acreage limitations also. The Desert Land Act permits granting of as much as 320 acres to each adult member of a family. The Reclamation Act permits one entry of as much as 160 acres to a qualified entryman or a comparable farm unit (which may be greater or smaller). There appear to be two purposes to the Reclamation limitations: limitation of the amount of subsidy per family, and encouragement of family operated farms. To the extent the acreage limitations of the Reclamation Laws are designed to limit the amount of subsidy to a family, it can be said to be effective. Whether the acreage limitations of the Desert Land Act are consistent with those of the Reclamation Act, in this respect, depends upon the amount of subsidy each enjoys. This is highly variable among situations and entrymen and requires study of each case on its merits. We know of no basis for any other generalized conclusion on the matter. To the extent the acreage limitations of the Reclamation Act are designed to encourage and maintain family-size owner-operated farms, comparison of the two acts becomes a rather meaningless effort. The present environment, including cost-price relationships, is driving American agriculture towards large-scale professionally managed farms--on reclamation projects as well as elsewhere.

The above conclusions are not very definitive in terms of the problems presented to us. This follows from the fact that each law was enacted for an era that has long since passed and both laws need to be reexamined and amended to implement the original concept of "family size farms."

QUESTION 1

- Q. What public domain lands, both reserved and unreserved, are required for the proposed Federal Reclamation Projects?
- A. No unreserved lands are needed for the Federal Reclamation Projects now proposed. Lands reserved for the Hillcrest, Guffey, and Long Tom Units will probably be needed. Lands reserved for the Initial Butte Unit may not be needed.

QUESTION 2

- Q. What effect will the proposed private development have on the proposed project in terms of land and water?
- A. No effect as to water. As to land, any private development of "project" lands would "high-grade" the lands, diminishing the feasibility of the project and delaying the development of the remaining lands. This effect may be minimal in the Initial Butte Area owing to the poor prospects for approval of a project for the area within the next 25 years.

QUESTION 3

Part 1

- Q. Are large association or corporate farm types of private development under the Desert Land Act consistent with the spirit and objectives of that act?
- A. An official Departmental position on the spirit and objectives of the Desert Land Act is stated in 43 CFR 2226.01, a statement which has been in existence since at least 1916 (45 LD 345). The regulation reads as follows:

"Subpart 2226--Desert Land Act

"§ 2226.0-1 Purpose.

"(a) It is the purpose of the statutes governing desert-land entries to encourage and promote the reclamation, by irrigation, of the arid and semiarid public lands of the Western States through individual effort and private capital, it being assumed that settlement and occupation will naturally follow when the lands have thus been rendered more productive and habitable.

"(b) Such reclamation is often a difficult and expensive undertaking, and desert-land entrymen sometimes find serious difficulty in complying with all the requirements of the law, particularly persons who possess little capital. All claimants should restrict their entries to only that quantity of land which they can reasonably expect to reclaim, even though

such area be much less than may be lawfully entered. As the more accessible and easily appropriated streams become exhausted, it becomes necessary to convey water, often for very long distances, from more remote sources of supply, more elaborate and expensive systems of irrigation are required, the cost of water rights correspondingly increased, and individuals consequently find it necessary to unite their efforts in various forms of cooperative enterprise in order to secure the necessary capital. Nevertheless, a small tract of land, thoroughly reclaimed, with an adequate water supply obtained from a large well-constructed irrigation system, may well be considered a very valuable piece of property, and more desirable than a larger tract only partially reclaimed or reclaimed from a small, private irrigation system less permanent and efficient in character." Large association or corporate farm types of private development would not be inconsistent with the spirit and objectives of the Act as they are stated in the regulation. However, the association or corporation cannot be a device to shield fraudulent entries, e.g., entries made by persons acting as dummies for others or entries by persons who have no intention to reclaim the land. This prohibition is clearly established in Court decisions (43 U.S.C.A. 321, Note 12).

Part 2

- Q. Are large associate or corporate farm types of private development compatible with the acreage limitations of the Federal Reclamation Laws?
- A. The original purpose and ultimate effect of the acreage limitations are problematical. No clear answer to the question is apparent. A partial answer can be approached by consideration of individual cases. For example, under the Desert Land Act, the higher the cost of development of water supplies to the value of the lands in their raw state, the relative subsidy to the enterprise is reduced and vice versa. Thus a group enterprise on poorer lands can involve a considerably smaller relative (as well as absolute) subsidy per entryman than an individual entry on richer lands. The reverse is true on reclamation projects. The higher the cost of the reclamation works relative to the productivity of the land, the greater is the relative and absolute subsidy. The multiplicity of possibilities seems to take the question out of the realm of practical considerations at this late stage in the operations of the two Acts.

RECOMMENDATIONS

Considering only the matrix of factors enclosed within the parameters established by the questions raised in the memorandum of September 2, 1964, we recommend that:

1. No Lands south of the Snake River should be withdrawn at this time for reclamation purposes.
2. Lands north of the Snake River withdrawn for the Hillcrest, Guffey, and Long Tom Units should remain in withdrawn status for the time being.
3. The Commissioner of Reclamation should by September 1, 1965, submit a report to the Secretary on the economics of alternate proposals for the Initial Butte area, with recommendations as to the retention of the withdrawal for that area.
4. All else being regular, proposals for group reclamation projects under the Desert Land Act should continue to be approved in the Snake River area, provided that careful investigation by the Bureau of Land Management with such assistance as may be provided by the Bureau of Reclamation shows, for each group, that
 - a. The proposal is feasible from the engineering point of view.
 - b. The proposal can be reasonably expected to be economically feasible over a sufficient period to give reasonable assurance of continued production under proper conservation management.
 - c. Each entry involved in the proposal would be economically feasible, taking into consideration its proper share of joint costs of development of water and other joint operations.
 - d. The arrangements among the applicants do not constitute a device to shield fraudulent entries. To assist in this, the Bureau of Land Management should require each applicant under oath to disclose the full details of the arrangements.

2/9/65

Date

Harold E. Spring
Commissioner of Reclamation

2/8/65

Date

acting R. M. Heilmann
Director, Bureau of Land Management

IDAHO DESERT LAND ENTRIES—INDIAN HILL GROUP

Rules of Practice: Government Contests

Where a stipulated record in a government contest filed against desert land entrymen raises more questions concerning the possible *malæ fides* of the entrymen than it answers, the contest should not be dismissed.

Desert Land Entry: Assignment—Act of March 28, 1908

An agreement between a desert land entryman and a corporation, which gives that corporation the exclusive right to possess the entry and to grow and harvest crops thereon for a term of twenty years, is an assignment to or for the benefit of a corporation within the meaning of the prohibition in section 2 of the act of March 28, 1908.

Desert Land Entry: Assignment—Act of March 28, 1908—Words and Phrases

The term "assignment" as used in the act of March 28, 1908, applies to a transfer to a corporation of the rights of a desert land entryman to enter upon the lands and remain in exclusive possession thereof and to grow and harvest crops thereon for the primary benefit of the corporation.

Desert Land Entry: Generally—Desert Land Entry: Assignment—Act of March 3, 1891

Section 7 of the act of March 3, 1891, provides that no person or association of persons shall hold by assignment or otherwise, prior to the issue of patent, more than 320 acres of arid or desert lands.

Desert Land Entry: Generally—Desert Land Entry: Assignment—Act of March 3, 1891—Words and Phrases

The terms "assignment," "hold" and "otherwise" as used in section 7 of the act of March 3, 1891, are words of broad signification and their precise meanings depend on the context in which they are used.

Desert Land Entry: Generally—Act of March 3, 1891—Words and Phrases

A corporation which has acquired actual possession or the right of actual possession to more than 320 acres of desert land "holds" such acreage within the meaning of the prohibition of section 7 of the act of March 3, 1891.

Desert Land Entry: Cultivation and Reclamation—Act of March 3, 1891

In order to comply with the requirements of section 2 of the act of March 3, 1891, a desert land entryman must either expend his own money on the necessary irrigation, reclamation, and cultivation of the entry or incur a personal liability for any money so expended.

Desert Land Entry: Cultivation and Reclamation—Act of March 3, 1891

Section 2 of the act of March 3, 1891, is satisfied where the desert land entryman hires others to do the necessary work of irrigation, reclamation, and cultivation at the entryman's own charge and expense.

Desert Land Entry: Applicants—Desert Land Entry: Applications—Desert Land Entry: Cultivation and Reclamation—Act of March 3, 1877

Section 1 of the act of March 3, 1877, requires a desert land applicant to file a declaration under oath that he intends to reclaim the tract of desert land

only, the definition says that an assignment " * * * unless in some way qualified * * *" is a transfer of the "whole interest." This does not say that the transfer may not be qualified and a lesser interest assigned

Because the entryman may get his land back, the Decision argues that the transfer is not of the "entire estate" and therefore not an assignment. Such an interpretation can only invite evasions of the purpose of the law. If a 20-year lease is not a forbidden assignment, then neither is a 99-year lease. And if they are not assignments, a corporation, or other disqualified person, can get the benefits of the law contrary to the express conditions under which Congress makes the grant. The meaning of the word "assignment" is not so rigid as to require so absurd a result.

To assign need not mean that the entire interest of the assignor is transferred. One can assign a note for collection, assign his assets for the benefit of creditors, assign property in trust for certain purposes, and in all cases provide that he retain an interest. An assignment in fraud of creditors is not a transfer of the assignor's interest in the property. Would he be heard to say that his act is not forbidden by law because he expected to get his property back? *4 Words and Phrases*, Perm. Ed. 493, *et seq.*

Consider a covenant against assignments in a lease. Could a lessee transfer all except the last day of the term and, because he retained that small portion of his interest, contend he had not breached the covenant?

"Assignment" as used in the 1908 Act applies to any transfer of any part of the rights of an entryman to a corporation. Insofar as the Director's Decision held otherwise, his holding was error.

The Holding in Excess of 320 Acres

Section 7 of the act of March 3, 1891, *supra*, provides that: "No person or association of persons shall hold by assignment or otherwise prior to the issue of patent, more than three hundred and twenty acres of such arid or desert lands * * *."

If the facts in the record are true, the operating corporation holds a total of 3,688.06 acres. This holding is by assignment. However, even if the arrangement were not an assignment, there is a holding of more than three hundred and twenty acres of desert lands. "As applied to property, the word (hold) is a technical one embracing two ideas, that of actual possession of some subject of dominion or property, and that of being invested with legal title or right to hold or claim such possession." *Balentine, Law Dictionary*, 1930. See also *Anderson's Dictionary of Law*, *Black's Law Dictionary*, 19 Words

April 5, 1965

and Phrases, Perm. Ed., 370, 372. *In re Coc's Estate*, 33 Cal. 2d 502, 202 P. 2d 1022 (1949).

A tenant under a lease for a term of years has a leasehold just as one who has an estate in fee simple or a life estate has a freehold. In the standard form books, the conventional form of lease contains a habendum clause which recites that the lessee shall "have and hold" for the term of the lease. Each entryman in this case, on February 18, 1963, appears to have entered into a Lease and Land Development Contract with Indian Hill Irrigation Company. This instrument, after describing the lands leased, recites "to have and to hold the same to the lessee from the 18 day of February 1963, to the 18 day of February 1983."

Under the Agreement, the operating corporation appears to have acquired (1) actual possession and (2) the right of actual possession. Under the law a lessee has the right to possession and may properly maintain an action for damages to the leasehold for trespass. In *West v. Brenner*, — Idaho —, 396 P. 2d 115 (1964), both elements of the technical definition of the word "hold" are found to be satisfied in the case of a lease. Hoodco Farms, Inc., seems to have actual possession of the entries of the entrymen and to have the right to hold such possession against the world.

It is conceded in the Brief of Contestees " * * * that an outright lease of the lands by an entryman to a corporation for a long term might be construed as a device to avoid the assignment provisions of the Desert Land Statutes." It is argued, however, that the transaction here described is not a lease because (1) it is a part of a financing transaction and (2) because it can be terminated by the entryman at any time by tender of the unpaid balance on the Hoodco note. The opinion of the Director agrees and suggests that the interest of Hoodco Farms in the land "arises from a mortgage coupled with a development contract" and "does not appear to attain even the status of a lease."

It should be noted first that the prohibition in the statute is not a prohibition against leasing, but a prohibition against holding. The result would be no different merely because the documents do not attain the status of leases if they entitle Hoodco, Inc., to hold the property. In other words, if Hoodco Farms, Inc., has possession and the right to retain possession it "holds" the desert land entries. ✓

The entrymen appear to have intended to enter into a lease. The agreement with Hoodco refers to the transaction in the following words: "It is understood and agreed that if the second party (Hoodco) continues to lease and farm said land for 20 years the indebtedness evidenced by said note shall be fully canceled and said mortgage shall be satisfied of record at the end of said 20-year period." (Exhibit 22)

386 DECISIONS OF THE DEPARTMENT OF THE INTERIOR 173 I.D.

UNITED STATES OF AMERICA v. OLLIE MAE SHEARMAN ET AL.—
IDAHO DESERT LAND ENTRIES—INDIAN HILL GROUP

A-30759

Decided December 30, 1966

Desert Land Entry: Assignment—Act of March 28, 1908

An agreement between a desert land entryman and a corporation which gives that corporation the exclusive right to possess the entry and to grow and harvest crops thereon for a term of twenty years, is an assignment to or for the benefit of a corporation within the meaning of the prohibition in section 2 of the act of March 28, 1908.

Desert Land Entry: Assignment—Act of March 28, 1908—Words and Phrases

The term "assignment" as used in the act of March 28, 1908, applies to a transfer to a corporation of the rights of a desert land entryman to enter upon the lands and remain in effective control thereof and to grow and harvest crops thereon for the benefit of the corporation.

Desert Land Entry: Assignment—Act of March 3, 1891

To determine whether an unlawful assignment of the desert entry was made one must look to the results of the documents used to determine the real nature of the agreement rather than to the labels the parties select for their designation.

Desert Land Entry: Assignment—Desert Land Entry: Generally

Section 7 of the act of March 3, 1891, and section 2 of the act of March 28, 1908, read together, and in the light of other provisions of the Desert Land Law indicated, a Congressional intention to prevent a consolidation of entries and to exclude corporations from control and reclamation of the entries. Consequently, the words "assignment" and "holding" are to be given a construction that will make the apparent purpose of the Act effective.

Desert Land Entry: Generally—Desert Land Entry: Assignment—Act of March 3, 1891

Section 7 of the act of March 3, 1891, provides that no person or association of persons shall hold by assignment or otherwise, prior to the issue of patent, more than 320 acres of arid or desert lands.

Desert Land Entry: Generally—Desert Land Entry: Assignment—Act of March 3, 1891—Words and Phrases

The terms "assignment," "hold" and "otherwise" as used in section 7 of the act of March 3, 1891, are words of broad signification and their precise meanings depend on the context in which they are used.

Desert Land Entry: Generally—Act of March 3, 1891—Words and Phrases

A corporation which has acquired actual possession or the right of actual possession to more than 320 acres of desert land "holds" such acreage within the meaning of the prohibition of section 7 of the act of March 3 1891.

Desert Land Entry: Cultivation and Reclamation—Act of March 3, 1891

In order to comply with the requirements of section 2 of the act of March 3, 1891, a desert land entryman must either expend his own money on the necessary irrigation, reclamation, and cultivation of the entry or incur a personal liability for any money so expended.

3861 UNITED STATES OF AMERICA *v.* OLLIE MAE SHEARMAN 425
 ET AL., IDAHO DESERT LAND ENTRIES—INDIAN HILL GROUP

December 30, 1966

that the application is made in good faith and not for the purpose of speculation or for the benefit of another person, the Court recognized the right to assign "if the entryman has complied with the statute and made the entry in good faith in accordance with the terms of the law and the oath required of him upon making such entry, and has done nothing inconsistent with the terms of the law." In brief, it is clear from the authorities that an entry upon the public lands made not in good faith, or in evasion of the provisions of the law, is a fraud upon the government and a combination of two or more persons to induce others to make such entries is a conspiracy punishable by section 5440 of the Revised Statutes (U.S. Comp. St. 1901, p. 3676).

Jones v. United States, 258 U.S. 40 (1922), is a suit brought to recover the value of lands allegedly obtained from the United States through fraudulent inducement and deals with a situation similar to this case. Justice Holmes, speaking for the Court, stated (at p. 47-48):

We may assume for the purposes of decision that the agreement and mortgage were not unlawful on their face and that the defendant took pains to make them known to the authorities; but obviously they might be made an instrument for the scheme alleged. They were prepared in contemplation of a plan to collect old soldiers for the purpose of making entries, the defendant paying an agent five dollars a piece for every contract brought in. The defendant admitted that he looked to the land, not to the soldiers, as his security and that he supposed the soldiers would sell the land to pay their debt to them. The land was timber land. There was evidence that the soldiers were not intending to make their residence upon it; that the agent employed to get their contracts knew that they were not intending to; that the defendant treated the intent as matter of indifference, and in his conversations with the agent indicated an expectation to get the land for himself or his nominees without the need for a preliminary contract to sell to him. He did get four of the nine parcels. Without going into details it is evident from the way in which the whole business was transacted that all hands proceeded on the notion that if the entrymen put in a periodical appearance on the land they would get it, and that no one troubled himself about actual intent provided the affidavits were in due form. It is impossible to say that the evidence did not warrant finding the defendant guilty of fraud.

At the time that entry was made on the desert lands on Indian Hill the entrymen were not acting in good faith but with intent to evade the provisions of the law. The patents were, therefore, erroneously issued and obtained by fraudulent and improper means. As the Court stated in the *Chaplin* decision, *supra*, "It is clear from the authorities that an entry upon the public land made not in good faith, or in evasion of the provisions of the law is a fraud upon the government."

X. The Holding by a Corporation

The next two issues, whether the agreements, notes and mortgages between the entrymen and Hoodco Farms, Inc., constitute prohibited assignments to or for the benefit of the corporation in violation of

426 DECISIONS OF THE DEPARTMENT OF THE INTERIOR (73 L.D.

section 2 of the act of March 28, 1908 (35 Stat. 52, 43 U.S.C. sec. 324), and whether Hoodco Farms, Inc., holds in excess of 320 acres in violation of section 7 of the act of March 3, 1891 (26 Stat. 1096, 43 U.S.C. sec. 329), are related and will also be considered jointly.

Section 2 provides that "no assignment * * * shall be allowed or recognized except to an individual * * *; but no assignment to or for the benefit of any corporation or association shall be authorized or recognized." Section 7 provides that "no person or association of persons shall hold by assignment or otherwise prior to the issuance of patent, more than three hundred and twenty acres of such arid or desert lands."

There is no question but that an entryman under the Desert Land Law has the right to mortgage his entry prior to patent to either an individual or a corporation as asserted by contestees (Shearman Brief, p. 51-58; Barnes Brief, p. 26). *Hafemann v. Gross*, 199 U.S. 342 (1905); *Whitney v. Buckman*, 13 Cal. 536 (1859); *Bashore v. Adolf*, 238 Pac. 534 (Idaho 1925); *Worthington v. Typton*, 172 Pac. 1048 (N.M. 1918); *Robert v. Hudson*, 173 Pac. 786 (Wyo. 1918). In fact, the regulations of the Department expressly recognized such right (43 CSR 2226.0-3(a)). There is likewise no question but that an entryman has the right to hire others to perform the work necessary for reclamation of the entries. He is not required to reclaim an entry by his own hand. *In re Henderson*, 21 Hawaii 104 (1912); *Williams v. Kirk*, 38 L.D. 429 (1910). But it does not logically follow that a mortgage to a corporation coupled with a contract to reclaim under a long term lease cannot constitute an assignment or cannot result in a holding by the corporation.

The contestees take the position that the agreements, notes and mortgages between the entrymen and Hoodco Farms constitute a security transaction only and were not, therefore, assignments (Shearman Brief, p. 51-52; Barnes Brief, p. 29). To determine whether an assignment was made one must look to the results of the documents rather than to the labels the parties select for their designation. "The courts look beyond mere names and within to see the real nature of an agreement, and determine from all its provisions taken together, and not from the name that has been given to it by the parties or from some isolated provision, its legal character and effect." *Arbuckle v. Gates*, 95 Va. 802, 30 S.E. 496 (1898). In this case, through the agreements, notes and mortgages, Hoodco Farms acquired:

1. The right to exclusive possession of the entries for a period of 20 years.
2. The right and obligation of reclaiming the land by grading and leveling and constructing an irrigation system.
3. The right to operate the irrigation system.
4. The exclusive right to farm the land and retain the proceeds from the farming operation.

3861 UNITED STATES OF AMERICA *v.* OLLIE MAE SHEARMAN 427
 ET AL., IDAHO DESERT LAND ENTRIES—INDIAN HILL GROUP
December 30, 1966

5. The right to pledge the entries to secure loans.

The question then is whether the transfer of these rights and obligations to the corporation constitutes an assignment and results in a holding within the meaning of the statute.

The parties agree that the words "assignment" and "hold" have no precise meaning but must be construed in the context in which they are used (Shearman Brief, p. 61; Gov't Reply Brief, p. 65). The contestees argue that the statute intends to prohibit the acquisition by a corporation of title to the land and that a transfer of anything less than the whole interest in the entry would not constitute an assignment or result in a holding by the corporation. But, in legal usage, "assignment" is used in some contexts to designate a transfer of the entire estate in land, in others, to refer to the transfer of only a partial interest. "Hold" is variously used with similar dual or multiple connotations. But reading sections 2 and 7 of the Desert Land Law together and particularly in the light of other provisions (section 5, for example, providing that the person so entering shall expend the \$3 per acre in reclaiming), it appears that Congress intended to prevent a consolidation of entries and to exclude corporations from control and reclamation of the entries. The words in section 7, "no person or association of persons shall hold by assignment or otherwise" clearly indicate a prohibition against a holding by any means whatsoever. Consequently, the words "assignment" and "hold" should be given a construction that will make the apparent purpose of the act effective.

United States v. Trinidad Coal and Coking Company, 137 U.S. 160 (1890), was an action under the Coal Lands Act to cancel patents allegedly issued on fraudulent misrepresentation. The act provided that no association of persons could hold more than 320 acres of coal land. The officers and employees of the defendant corporation entered separate tracts of coal lands which were subsequently used by the corporation. In answering an argument that this was permissible under the statute, the Court said (at p. 166-167):

• • • This contention cannot be sustained unless the court lends its aid to make successful a mere device to evade the statute. The policy adopted for disposing of the vacant coal lands of the United States should not be frustrated in this way. It was for Congress to prescribe the conditions under which individuals and associations of individuals might acquire these lands, and its intention should not be defeated by a narrow construction of the statute. If the scheme described in the bill be upheld as consistent with the statute, it is easy to see that the prohibition upon an association entering more than 320 acres, or entering or holding additional coal lands, where one of its members has taken the benefit of its provisions, would be of no value whatever. • • •

In *United States v. Kretel*, 211 U.S. 370 (1908), the Court, in considering the same question, stated (at p. 390):

* * * It is a misconception to assume that there is any real identity between a purchase made by a qualified person in his own name and for himself with a purchase made by such person ostensibly for himself but really as the agent of a disqualified person. In the one case the person securing coal land from the United States for himself is free to dispose of the land after acquisition as he may deem best for his interest and for the development of the property acquired. In the other case the ostensible purchaser acquires with no dominion or control over the property, with no power to deal with it free from the control of the disqualified person for whose benefit the purchase was made.

The Court, in these cases, looked to the person receiving the benefit of the entries in determining whether there was a holding of more than 320 acres and whether the result was fraudulent.

Assignment as used in sections 2 and 7 is, therefore, concluded to mean such interest or partial interest as will result in effective control of and benefit from the entry or entries. The acquisition of such interest constitutes a holding within the meaning of the statute. In this case, the right to possess, reclaim, farm, retain the farming proceeds and pledge the entries, gave Hoodco Farms complete dominion over the entries for a period of 20 years and constituted a prohibited assignment and holding in excess of 320 acres of desert land.

XI. Expenditure on the Entries

The next issue presented is whether each entryman has failed to expend the amount required by law necessary for irrigation, reclamation, and cultivation of the lands as required by section 5 of the act of March 3, 1891. This section provides:

No land shall be patented to any person * * * unless he or his assignors shall have expended in the necessary irrigation, reclamation, and cultivation * * * thereof, * * * at least \$3 per acre.

The entrymen, with the exception of Reed and Michener, did not spend \$3 per acre of their own funds, pledge their personal credit, or become personally involved in the reclamation of their desert land entries. Hoodco Farms supplied all of the money expended to meet the \$3 per acre expenditure requirement. The Government takes the position that the entryman has to become personally involved in the expenditure requirement in order to meet the provisions of the statute (Gov't Brief, p. 119-121). The contestees contend that the source of funds is immaterial (Shearman Brief, p. 63-69). Both turn to the legislative history, finding support in the House Report No. 1888, 49th Cong. 2d Sess. 2 (1886), which reads:

The tide of emigration which flows in increasing volume upon this desert territory demands that the law be so framed and administered that titles may be acquired by those who in good faith brave the hardship of the frontier and by expenditure of time and labor successfully reclaim the desert waste.

provision by which the Secretary of the Treasury may be clothed with authority to grant relief in like cases, but it can afford no warrant for the disregard by the Department of a most wholesome and salutary restraint upon the due and strict observance of which the most important interests depend.

See also Heirs of Isaac W. Talkington (5 L. D., 114) Joseph Brown (id., 316); George B. Foote (2 L. D., 773)

While the money can not be returned to the depositor, it can be applied to a new survey if one be desired.

DESERT LAND ENTRY—COMPACTNESS.

WILLIAM THOMPSON.

As the desert land act does not specifically prescribe what shall be considered "compact," an entry made in accordance with existing regulations, and for which final proof was accepted as made, will not be disturbed though not within the later requirements of the Department as to compactness.

Secretary Vilas to Commissioner Stockslager, January 22, 1889.

I have considered the appeal of William Thompson from the decision of your office, dated May 31, 1887, requiring an adjustment of the boundaries of his desert land entry No. 389, final certificate No. 141, of the Lots 2 & 3, Sec. 7, T. 11 N., R. 8 E., and the E. $\frac{1}{2}$ of the SE. $\frac{1}{4}$ of Sec. 12, and the NE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$, the W. $\frac{1}{2}$ of the NE. $\frac{1}{4}$, the W. $\frac{1}{2}$ of the SE. $\frac{1}{4}$, the SW. $\frac{1}{4}$ of Sec. 13, the SW. $\frac{1}{4}$ of the NE. $\frac{1}{4}$, and the N. $\frac{1}{2}$ of the NW. $\frac{1}{4}$ of Sec. 24, T. 11 N., R. 7 E., Salt Lake City, Utah Territory.

The record shows that said Thompson filed his desert land declaratory statement on October 20, 1879, and made final proof and received final certificate No. 147 on October 7, 1882.

On May 31, 1887, your office examined the papers and held that said entry "being two miles long and five eighths of a mile wide," was not compact as required by law and the regulations of this Department, and that the claimant must re-adjust the boundaries of his entry so as to bring it within the rule, and also furnish supplemental proof showing the nature and extent of his water right.

The appellant has filed, with his appeal, his duly corroborated affidavit alleging that, on October 7, 1882, he made final proof on said entry, and received his final receipt No. 147; that when he made his final proof he showed that he held his water right for said land by virtue of having taken the water from Bear river, "owning the ditch to the land, and the appropriation of the water; that Bear river is one of the largest rivers in said Territory and runs about nine miles south of said land; that he has dug a canal from said river, to the land in question; that the main canal is about sixteen feet wide and three feet deep, being filled with water, and "enters very near the southwest corner of said section twenty-four and strikes the land covered by said entry on the southeast corner, from which it runs along said entry on the east side,

on appeal, that it appeared of record that the lands immediately adjoining the lands in question have all been entered under the desert land law by other parties, so that there was no way of rendering said entry more compact than it is, and still retains the same quantity of land; that "the case is precisely like that of Ann E. Miller, decided by this Department May 22, 1886. In that case the entry was a mile long and a quarter of a mile wide, and the adjoining lands were all appropriated by other persons," and her entry was allowed to remain intact. In the case of John Durbize (6 L. D., 536) the Department held that under the rules and regulations in regard to desert land entries in force at the time said entry was made, it was not allowable to permit an entry along the margin or including both sides of a stream, showing gross departure from all reasonable requirements of compactness.

An inspection of the records of your office shows, that the allegations of the claimant are substantially true, relative to the appropriation of tracts adjoining said land, and the position of a hill on the east and south of said entry so that he can not now adjust his boundaries without diminishing the amount of land entered by him. Besides, the width of his entry, measuring from the west line in said sections 13 and 24, to the east line of said lots in section 7, is one mile and not five eighths as stated in said decision of your office. It is true that the entry is irregular, as to that portion lying in the NE. $\frac{1}{4}$ of said Section 13, the SE. $\frac{1}{4}$ of Section 12, and the lots in Section 7. But when said desert application was filed, as we have seen, it did not conflict with the regulations of your office construing the desert land act. The local officers accepted the first payment upon said land. The entry does not lie along the margin or on both sides of any stream, and it appears, that the claimant has brought water from Bear river a distance of nine miles to his claim, and that he has complied with the requirements of the law as to reclamation. In the case of David B. Dole (3 L. D., 214), my predecessor, Secretary Teller, considering the question of assignments of desert land entries allowed under departmental regulations dated March 12, 1877, which were subsequently revoked in the case of S. W. Downey (7 C. L. O., 26), held that the ruling in the Downey case was correct, except that part which held that "there is no discretion either in this act, or by any other law, which authorizes me to treat such claims assignable, because the assignment was made under a misapprehension." And referring to that part of said ruling, Secretary Teller said:

I do not understand that a party acts under a misapprehension of the law, so as to lose any right, when he acts under its official interpretation. The misapprehension in such case is upon the part of the interpreting authority and not upon him who in the prosecution of a claim conforms to such interpretation. A different rule would permit every person to construe the law for himself, and hence, your office being a proper exponent of this law, entrymen and their assignees acting under such exposition should not be required to forfeit any right by subsequent construction inconsistent with the first.

But the Secretary further held that an assignee of an entryman, prior to final entry, could not acquire under said act more than six hundred and forty acres of land.

On September 15, 1887, Acting Secretary Muldrow (6 L. D., 145) advised your office relative to the proper construction of the third section of the desert land circular of June 27, 1887 (5 L. D., 708), concerning the price to be paid by the entryman where the initial entry was made prior to the promulgation of said circular. The Acting Secretary held that the making of an entry under the desert land law is a contract between the entryman and the United States, the entryman agreeing to reclaim the tract entered from its desert condition, and to pay for the same at the government price, and the United States agreeing to give him a patent for said land upon the performance of the conditions in the contract; that this contract, like all others, is to be construed and enforced according to the sense in which the parties mutually understood it at the time it was made (1 Chitty on Contracts, 104) and that effect is to be given to it, according to the law at the time it was made, (*id.*, 130).

The Acting Secretary further held that the construction of the Department "which had been in existence from the date of the act until the date of the present circular, had, while it existed the force and effect of law so far as rights acquired under it are concerned," that it was a construction of the law by the head of the Department charged with the execution of it, and the law was administered according to this construction; that it made no difference that the construction of the law has changed; that the sound and true rule is, that if the contract, when made, was valid by the law as then interpreted and administered, its validity and obligation can not be impaired by any subsequent decisions altering the construction of the law. Citing *Rowan et al. v. Runnels* (5 How., 134); *Ohio Life and Trust Co. v. Debolt* (16 *id.*, 127); *Gelpcke et al. v. City of Dubuque* (1 Wall., 175).

Since the desert land act does not specifically prescribe what shall be considered "compact" with reference to the tract entered, and said entry was made in accordance with the rules and regulations in force at the time it was made, and since it appears that the government, not only failed to require him to amend his entry prior to the allowance of his final proof showing reclamation in good faith of the land, but also continued to dispose of the adjoining tracts for five years subsequent to final entry, I am clearly of the opinion that, both upon principle and authority, the entry should be approved and passed to patent.

The decision of your office is modified accordingly.

477]

RAYMOND L. GUNDERSON

477

December 2, 1964

RAYMOND L. GUNDERSON

A-30134

*Decided December 2, 1964***Homesteads (Ordinary): Applications—Homesteads (Ordinary): Second Entry—Alaska: Homesteads**

The filing of an allowable homestead application in Alaska constitutes an entry within the meaning of the act of September 5, 1914, so that an individual who has filed an allowable homestead application in Alaska but withdrawn it prior to allowance by the land office has exercised his right of entry under the homestead law and is properly required to make the necessary showing for a second homestead entry under the 1914 act in connection with any subsequent homestead application.

Homesteads (Ordinary): Applications—Homesteads (Ordinary): Second Entry—Alaska: Homesteads—Administrative Practice

An amendment of a departmental regulation to provide expressly for the first time that the showing required for making a second homestead entry must be made in cases where a homestead application has been filed but withdrawn prior to allowance will not be applied where the first application was filed and withdrawn prior to the effective date of the amendment, particularly where the practice of the land office has been not to require the showing.

Applications and Entries: Priority—Homesteads (Ordinary): Applications

The filing of concurrent homestead applications by an individual bars the allowance of either so long as both applications remain of record and, while the withdrawal of one will permit the allowance of the other, such allowance will be subject to otherwise intervening rights that have been asserted prior to the withdrawal of the first application.

Words and Phrases

Entry. An "entry," within the meaning of the act of September 5, 1914, permitting a second homestead entry where a prior entry has been lost for reasons beyond the control of the entryman, includes the filing of an allowable homestead application in Alaska which is withdrawn by the applicant before it is allowed.

APPEAL FROM THE BUREAU OF LAND MANAGEMENT

Raymond L. Gunderson has appealed to the Secretary of the Interior from a decision dated August 13, 1963, whereby the Division of Appeals, Bureau of Land Management, affirmed a decision of the Anchorage, Alaska, land office rejecting his application for second homestead entry.

On February 21, 1961, Gunderson filed an application for homestead entry, Anchorage 053871, for the S1½SW¼ sec. 28, T. 5 N., R. 11 W., Seward Mer., Alaska. On April 7, 1961, he filed a relinquishment of all right, title, and interest in and to the land described in

December 2, 1964

the entryman has exercised his right of entry under the homestead law, and if he fails to earn a patent to the land he is precluded from making another entry unless he can make the showing required by the act of September 5, 1914, *supra*. This is true whether the entry is relinquished before the entryman takes physical possession of the land (*Velma Lorene Shelley*, A-28572 (March 10, 1961)) or after the entryman has commenced residence on the land (*Kermit A. Dowse*, A-29355 (June 7, 1963)); *John E. Schulz*, A-29552 (September 25, 1963).

There is essentially no difference between the withdrawal of an allowable application before it has been allowed and the relinquishment of an entry after it has been allowed but before the entryman has taken physical possession of the premises. In either event, the entryman, without deriving any tangible benefit from the use of the land, has given up his right, through compliance with the requirements of the homestead law, to obtain title to a particular tract of land. The right is the same in either case, and that right is exercised, if at all, by the filing of the application. The allowance of an entry by the land office is no more than administrative recognition of the fact that an applicant has successfully exercised his right to make an entry by the filing of his application. Rejection of an application, on the other hand, is the administrative determination that an applicant did not exercise that right by the filing of his application. The exercise or nonexercise of the right of entry, however, is determined by the facts that exist at the time the application is filed and not by the act of allowance or disallowance by the land office.¹ Accordingly, I find the term "allowable application" to be within the meaning of the word "entry" as used in the act of September 5, 1914, and as used in the Department's regulations pertaining to entries under the homestead law.

The appellant contends that even if this interpretation is correct, it is wrong to apply it in his case because the Anchorage land office had, prior to the July 21, 1961, instructions to the State Director, followed a practice of not requiring the showing necessary for a second homestead entry by an applicant who had withdrawn a previous application prior to its allowance by the land office.¹ He argues that his case should be governed by the policy that was being followed at the time of his relinquishment in April 1961.

¹ In the instructions the Chief of the Division of Lands and Recreation stated:

"* * * Your office has enunciated the view that unless and until a homestead application is allowed, the applicant therefor may withdraw his application and is not thereafter to be required to make in connection with subsequent applications the 'second entry' showing contemplated by the Act of September 5, 1914 * * *"

"We cannot concur in that view. * * *"

The appellant's position is well-taken. Prior to July 18, 1963, the pertinent homestead regulation on second entries in Alaska provided that the showing required by the 1914 act must be made only "if the applicant has made homestead entry * * * and failed to perfect title to the land." 43 CFR, 1954 rev., 65.12. Contrasted with the specific reference in the desert land regulation to an allowable application which is withdrawn, the homestead regulation at least created a doubt as to whether an allowable homestead application would count as an entry under the 1914 act. The Alaskan land offices apparently read the regulation as not including allowable applications. It was not until July 18, 1963, that the regulation was amended to make its meaning clear.

In a case in which the Bureau of Land Management interpreted an oil and gas regulation contrary to its plain meaning and issued leases to numerous applicants whose applications were defective under the express language of the regulation, the Department held, in reversing the Bureau, that it would, in effect, apply the correct meaning of the regulation only prospectively and would not vitiate actions taken under the prior erroneous interpretation. *S. J. Hooper*, 61 I.D. 350 (1954); *De Armas, Jr. and McKenna*, 63 I.D. 82 (1956). The Department was sustained by the courts. *McKenna v. Seaton*, 259 F. 2d 780 (D.C. Cir. 1958).

In a second situation in which the Bureau of Land Management extended oil and gas leases under a Solicitor's opinion which was subsequently overruled, the Department applied the second opinion only prospectively. *Franco Western Oil Company et al.*, 65 I.D. 427 (1958). Again the Department was sustained by the courts. *Safarik v. Udall*, 304 F. 2d 944 (D.C. Cir. 1962), *cert. denied*, 371 U.S. 901.

These cases are closely analogous to the situation under consideration and seem fully to justify a ruling that the amended homestead regulation be applied only to allowable homestead applications filed after the effective date of the amendment to the regulation. 'Until the Department provided by specific regulation that the word "entry," as used in the act of September 5, 1914, included the filing of an allowable application for homestead entry, the meaning of the term "entry" was not so clear as to warrant holding an applicant accountable for understanding that the mere act of filing an allowable homestead entry application would exhaust his rights under the homestead law even if he should elect to withdraw the application before it was acted upon.' Under these circumstances, the appellant will not be required to make the showing required by the act of September 5, 1914, in connection with the filing of his present application.



UNITED STATES
DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

Idaho Land Office
Box 2237
Boise, Idaho 83701

IN REPLY REFER TO:

L:VSS
Idaho 014251

CERTIFIED MAIL
Return Receipt Requested

MAR 15 1965

Milo Axelsen
Route #3
Caldwell, Idaho

Dear Mr. Axelsen:

The final proof papers submitted in connection with your desert land entry were reviewed. In addition, on July 7, 1964 this office called upon you to submit copies of documents reflecting the contractual arrangements made between you as an entryman and the Sailor Creek Water Company, operating both as a water supplier and developer of the land. Certain issues, after legal review, have been raised requiring clarification. The Bureau, therefore, has requested that we obtain supplemental proof, under oath, showing a full disclosure of the arrangements that have been made in connection with your desert entry. These include the following:

1. The documents are not clear that you, as an entryman, are not holding this entry for the benefit of others.
2. It is not clear whether you have expended any of your own funds in the reclamation of your entry.
3. It is not clear that you have a valid contract interest in a complete irrigation project and a distribution system to irrigate the land.

With respect to Point No. 1 the record does not show conclusively that you are not acting for the benefit of others. The issue before us is whether or not persons or corporations through you and other entrymen may be acting to acquire benefits on Government land through the Desert Land Act for which they are not entitled. The intent of the Desert Land Act is, in part, to make Government land available for the benefit of the entryman rather than a corporation. Please state how you intend to benefit from your desert land entry in view of your contractual arrangements and taking into account your obligations thereunder.

In regard to Point No. 2, your final proof papers indicate the expenditure of certain funds for the cost of improvements on the land. The water contract with the Sailor Creek Water Company indicates a substantial amount obligated by yourself to the Company for your water right. This was to be paid with a substantial down payment due on the date on which the desert land application was allowed by this office--and paid within 30 days thereafter. The balance of the purchase price was to be paid in 19 annual installments at six percent interest. The records are not clear as to the extent to which you have personally paid any of these amounts--specifically, the down payment. It is noted that the down payment is included as expenditure on the final proof papers to which you certified.

Please list in detail any of your own funds expended on your entry such as filing fees, attorney's fees, purchase price for the land, development of land, development of water works, cropping, etc.

In regard to Point No. 3, in connection with the water right, upon inquiry with the office of the Idaho Public Utilities Commission, we have been informed that the Sailor Creek Water Company has taken no action with respect to filing reports or rate schedules with that Commission. It appears that this joint venture, if it is in fact under a duty to provide water to the various entrymen, is engaged in the utility business for a profit, since the entrymen claim no interest in or control of the joint venture enterprise, and its activity of providing a water supply to the entries at a profit would come under the jurisdiction of that Commission. See Title 61, Idaho Code Annotated, particularly sections 61-125, 61-301, 61-305, 61-401 and 61-405.

Also, in connection with your proof of providing a permanent irrigation system for the entry, it is not clear from the information available to us that you have available to you a permanent sprinkler distribution system. Please provide the details of your arrangement for this essential part of the water distribution system.

This office will require, before issuance of patent, that the records clearly indicate any and all contractual arrangements which you have entered into dealing with your entry and by specifically clarifying the above questions. Please furnish this office true copies of all documents which you have executed or have become a party to, affecting in any way the title to or interest in the lands and water supply of your desert entry.

As indicated above, we have previously been furnished copies of certain documents. However, these documents were not submitted under oath and were not, in all cases, signed and executed by the entryman. The submission of the above information should be under oath. A sample format of an affidavit satisfactory to this office is attached.

Your personal certification should affirm that the copies of the documents which you are submitting constitute all the documents made by you pertaining to your entry. This certification should also affirm that it contains a full disclosure of all the arrangements pertaining to your entry.

Sincerely yours,

Orval G. Hadley
Manager, Land Office

Attachment

cc: Anderson, Kaufman & Anderson ✓

Sailor Creek Water Company

AFFIDAVIT

STATE OF IDAHO)
) ss.
 County of _____)

_____, being first duly sworn, deposes and says
 (Name of Entryman)
 as follows:

 (Signature)

SUBSCRIBED AND SWORN to before me this _____ day of _____, 19__.

(SEAL)

 Notary Public for Idaho

Villages of Koliganek and Lime Village show that the Bureau of Land Management identified these withdrawals in a pattern whereby townships which do not physically touch due to a correction offset are deemed not to corner. Information submitted on several other villages also evidence this fact. There is no showing that the Bureau of Land Management identified cornering townships in any other manner involving other situations where village withdrawals were affected by a correction line.

Information contained in the Bureau of Land Management's Memorandum in Support of its Petition for Reconsideration also shows that at least 18 villages, and possibly more, made their selections based on this determination of the Bureau of Land Management. It is asserted, without contradiction, that at least 18 villages, if not all villages except Eklutna, have relied upon this determination made by the Bureau of Land Management.

[4] Even though this Board does not believe that the interpretation of cornering as determined by the Bureau of Land Management was the only reasonable interpretation of the word cornering, this Board does believe that it was a reasonable interpretation of § 11(a)(1) of ANCSA. Since it has been applied consistently with reliance thereon by the village corporations in making their land selections under ANCSA, this Board will not disturb the procedures followed by the Bureau of Land Management in iden-

tifying the § 11(a)(1) withdrawal areas under ANCSA.

[5] For the above reasons this Board, upon reconsideration, reverses its Decision of Sept. 28, 1976, and finds that townships, which by legal description have a common corner, but are not in actual physical contact due to the location of a "standard parallel" or "correction" line, such townships shall be considered as not cornering for purposes of § 11(a) of ANCSA. The Decision of the Bureau of Land Management of Aug. 1, 1974, which rejected the selection application of Eklutna, Inc., in T. 17 N., R. 3 E., Seward Meridian, Alaska, is hereby affirmed.

This represents a unanimous decision of the Board.

JUDITH M. BRADY,
*Chairman, Alaska Native
Claims Appeal Board.*

ABIGAIL F. DUNNING,
Board Member.

LAWRENCE MATSON,
Board Member.

ALASKA PLACER COMPANY

33 IBLA 187

Decided December 21, 1977

Appeal from the decision of the Alaska State Office of the Bureau of Land Management holding for rejection appellant's mineral patent application F-13922.

Reversed.

a connecting relationship and a privity of interest between the partnership and the company. Therefore, the continuity of the adverse possession of the partnership was not broken by reason of any legal-technical deficiency in the conveyance to Alaska Placer, since "any conveyance or understanding," the purpose of which was to transfer possession of these claims, would be sufficient to preserve the continuity of possession under these circumstances. It cannot be doubted that it was the intention of the partners to transfer and assign the claims to Alaska Placer, along with the mining lease held by Richard Lee at that time. For example, paragraph No. 3 of the instrument states:

3. The First Party [the partnership] hereby assigns to the Second Party [Alaska Placer] all of its rights and liabilities under that certain . . . sublease entered into on April 6, 1960 by and between Lomen & Gabrielson and Richard E. Lee, of Nome, Alaska, and the Second Party hereby accepts all rights and liabilities under the said lease and sublease.

Paragraph No. 6 states:

6. It is understood that the rights and liabilities of the First and Second Parties under the said leases are of nominal value only at the present time but may increase in value due to future workings of the mining claims represented thereby. Any increase in value of said mining claims and leases will accrue to the First Party by virtue of the stock ownership of the Second Party.

Obviously, if Lomen and Gabrielson intended to realize the benefit of any increase in the value of the claims through the enhanced value of their stock in Alaska Placer, they must have contemplated that

Alaska Placer would be the owner of the claims. Otherwise, the increase in the value of the claims would have accrued to them directly, as the owners.

The Court of Appeals for the Ninth Circuit, in construing the Alaska adverse possession statute, has applied the majority rule concerning privity and continuity of possession. In *Ringsstad v. Grannis*, 171 F.2d 170 (9th Cir. 1948), the Court held that "adverse possession may be by different occupants where privity exists between them," adding that if successive possessions are connected by any agreement or understanding which has for its object the transfer of the rights of the possessor, and is accompanied by a transfer of possession in fact, it is sufficient to constitute a continuous possession.

We are of the opinion that there was the requisite privity, agreement and intent between the partnership and Alaska Placer to bring Alaska Placer within the purview of this rule.

[4] We must now consider whether the actual physical occupation of the land by Richard Lee and his wife was in fact the occupancy and possession of the partnership and Alaska Placer, respectively, or whether the holding by the Lees interrupted the continuity of possession under the statute.

Richard Lee first took possession of the claims in 1960 pursuant to a mining lease issued by the partnership, and Lee remained in possession under authority of that lease until March 25, 1965, when Richard

December 21, 1977

and Phyllis Lee contracted to purchase the claims from Alaska Placer. Thus, Lee was in possession under the permission granted by the lease, and could not have been holding adversely against his lessors. "It is elementary that adverse possession cannot be permissive. Conversely, permissive possession is not adverse." 3 Am. Jur. 2d *Adverse Possession* § 36. Yet the question remains, where the lessor is asserting title under 30 U.S.C. § 38 (1970), based upon a statute of limitations, can the lessor be credited with actual possession of the claims during the time they were being occupied and worked by his lessee? We find in the affirmative.

Actual possession of land consists of exercising acts of dominion over it, making the ordinary use of it, and taking the ordinary profits it is capable of producing in its present state. Pedis possessio is not indispensable to the necessary possession The possession need not be by the claimant personally, but may be effected through another on his behalf.

* * * * *

Accordingly, the requirement of actual possession may be met through possession on behalf of the adverse claimant by an agent, licensee, relative or tenant. If the possession is by tenant of the claimant it is in law the claimant's possession and he may avail himself of its benefits. The nature of the required possession is not altered when it is supplied through a tenant, however. In such case, the tenant is the means by which the necessary open, hostile, notorious, continuous, exclusive possession under a claim of right is achieved; in common parlance, the tenant flies the landlord's flag.

3 Am. Jur. 2d *Adverse Possession* §§ 13, 15 (1962) [Footnotes omit-

ted]. See also 2 C.J.S. *Adverse Possession*, §§ 46, 47 (1972).

Actual possession by a tenant of the adverse claimant will inure to the latter's benefit and ripen into title in his favor. *Combs v. Ezell*, 232 Ky. 602, 24 S.W.2d 301 (Ct. of App., Ky., 1930).

Therefore, Richard Lee's occupation and working of the claims under the lease constituted possession of the claims, at first by the partnership and, subsequently, by Alaska Placer. Since we have held that the possession of Lomen and Gabrielson can be tacked to that of Alaska Placer, we are brought to a recognition of qualifying possession for the period from 1957, when the partnership first took possession, to Mar. 1965, when the mining lease was supplanted by the conditional contract of sale by Alaska Placer to Richard and Phyllis Lee. Because a possession from 1957 to 1965 does not satisfy the Alaska 10-year statute, we must now determine whether the Lee's possession thereafter also can be regarded as the possession of Alaska Placer.

[5] During the Lees' operation of the claims during the 1965 mining season, Alaska Placer had its own representative on the ground in the person of Kimball Dunbar, Kirk Dunbar's son. It was apparently his function to observe and report on the progress of the work and the extent of the Lees' compliance with their contract obligations to Alaska Placer. About the end of that mining season, on October 5, 1965, Alaska Placer notified the Lees that

it was invoking the forfeiture clause in the contract. However, the Lees failed to vacate the premises, and in March 1966 Alaska Placer brought an action in the state court to enjoin them from the claims. This litigation was finally concluded by the decision of the Supreme Court of the State of Alaska on June 4, 1969. *Alaska Placer Co. v. Lee*, *supra*. While the litigation was in progress the Lees remained in possession of the claims, asserting that they had a right thereto by reason of their contract with Alaska Placer, which they maintained had not been breached. During this period the Lees continued to work the claims and produced and sold a considerable quantity of ore.⁴ In 1969, however, the Alaska Supreme Court held that the Lees had breached their contract in 1965, that Alaska Placer had properly invoked the forfeiture clause, and that "[the Lees'] failure to vacate the mining claims after forfeiture of their interest made them trespassers." *Id.*, at 455 P. 2d 229.

There followed litigation initiated by Alaska Placer to recover damages from the Lees for the proceeds from the smelter runs of ore mined and shipped by the Lees while they were resisting Alaska Placer's efforts to eject them. *Alaska Placer Co. v. Lee*, 502 P.2d 128 (Sup. Ct., Alas., 1972), and *Alaska Placer Co. v. Lee*, 553 P.2d 54 (Sup. Ct., Alas., 1976). Neither of these

latter decisions concerned the title to the claims. Rather, they concerned the nature and character of the Lees' trespass on the claims and the consequent measure of damages to be applied.

The Mar. 1977 title opinion by the Regional Solicitor's Office and the decision from which this appeal is taken expressed certain misgivings about this litigation, stating: "[T]he decision in each of these suits and their effect on (1) The Company's ability to establish possession for the statutory period, and (2) The Lees' status as possible adverse claimants must be included in the narration of facts presented by the applicant."

As noted above, only the 1969 decision by the Supreme Court of Alaska was concerned with the question of the title and possessory rights to the claims, and it held in favor of Alaska Placer and declared the Lees to be trespassers. The two subsequent decisions had nothing whatever to do with the title or possessory interests.

With regard to "the Lees' status as possible adverse claimants," both the title opinion and the decision failed to take note of the fact that the Lees had on March 1, 1973, filed a formal protest against this patent application. By decision of the Alaska State Office dated May 30, 1975, the Lees' protest was dismissed, the State Office holding, in part, that "the parties of protest [the Lees] have failed to provide sufficient evidence to establish an adverse title or interest in the mining claims described." The Lees ap-

⁴ The Supreme Court found that the proceeds from the claims were:

"1966—\$75,943.39

1967—80,245.91

1968—105,620.17"

553 P. 2d at 62, N. 27.

December 21, 1977

pealed to this Board from that State Office decision, and on Oct. 30, 1975, their appeal was dismissed. *Richard E. and Phyllis Lee*, 22 IBLA 284 (1975). Therefore, the Lees' status as possible adverse claimants *has already been administratively adjudicated, as reflected by the case record.*

During the entire period of the Lees' possession and working of these claims they were asserting their right to be there on the basis of either the mining lease or the conditional sales contract. That is, they were there by virtue of their recognition of Alaska Placer's asserted paramount legal title. They were mining the claims not only for their own account, but also for the account of Alaska Placer. At no time prior to the filing of their 1973 protest did they assert a claim of title or interest independent from or exclusive of the title asserted by Alaska Placer. Their sole dispute with Alaska Placer was whether they had breached their conditional sales contract to the extent that Alaska Placer could properly declare their interest forfeited. The fact that Alaska Placer had entered into the conditional sales contract did not divest Alaska Placer of the title it was asserting. The contract only served to invest the Lees with a certain equity, which was subsequently vitiated by their failure of performance and forfeiture. In fact, the execution of the contract to sell to the Lees actually strengthened Alaska Placer's claim to an adverse possession of the claims, viz; "Also, adverse possession may be evidenced

by such acts as *conveying*, leasing, mortgaging, or paying the insurance or taxes on the property; * * * 5 Thompson on Real Property, *Adverse Possession*, § 2544. [Italics added.]

Upon default by the Lees, Alaska Placer acted promptly and diligently to assert its claims of title and to evict them, as noted by the Alaska Supreme Court in its 1969 opinion, *supra*. The Lees at all times material to this discussion recognized the title asserted by Alaska Placer and claimed their interest under that title. A substantial portion of the value of the ore mined by them was awarded by the court to Alaska Placer. In light of this, the occupancy and working of the claims by the Lees under the conditional contract of sale cannot be distinguished in any meaningful or material aspect from their working of the claims under the mining lease. Therefore, for the purposes of 50 U.S.C. § 38 (1970), we hold that the occupancy and working of the claims by the Lees from 1960 to 1969 was in law the possession of Alaska Placer, and it may avail itself of the benefit of such possession.

R. Kirk Dunbar filed in the Alaska State Office his affidavit dated February 4, 1977, wherein he states that in 1969 (after the Lees were enjoined from occupying the claims) Alaska Placer went into actual possession of the claims and operated them for its own account through 1973, when Alaska Placer granted a mining lease to Grothe

61ST CONGRESS, }
2d Session. }

SENATE.

{ REPORT
No. 423.

RELIEF OF ASSIGNEES IN GOOD FAITH OF DESERT LANDS.

MARCH 18, 1910.—Ordered to be printed.

Mr. FLINT, from the Committee on Public Lands, submitted the following.

REPORT.

[To accompany S. 6636.]

The Committee on Public Lands, to whom was referred the bill (S. 6636) for the relief of assignees in good faith of entries of desert lands, having had the same under consideration, report it back favorably with a recommendation that it do pass as amended.

When this bill was considered by your committee, Mr. Oscar Lawler, Assistant Attorney-General for the Interior Department, was present and gave information in regard to the subject-matter of the same. The bill as now reported carries out the views of the Interior Department as set forth by Mr. Lawler.

The statement of Mr. Lawler is appended hereto as part of this report.

COMMITTEE ON PUBLIC LANDS, UNITED STATES SENATE,
Wednesday, March 9, 1910.

The committee met at 10 a. m.

Present: Senators Nelson (chairman), Clark, of Wyoming; Gamble, Smoot, Flint, Heyburn, Dixon, Jones, Chamberlain, and Hughes.

Mr. Oscar Lawler, Assistant Attorney-General for the Interior Department, was also present, by invitation of the committee.

The bill under consideration is S. 6636, introduced by Senator Flint, February 18, 1910, being a bill for the relief of assignees, in good faith, of entries of desert lands, which reads as follows:

"Be it enacted, etc., That any person who has, in good faith, heretofore acquired by assignment a desert-land entry, which entry is regular upon its face, in the belief that he was obtaining valid title thereto, which assignment has been accepted and recognized by the Interior Department as a proper transfer of such entry, shall be entitled to complete the entry so acquired: *Provided, however,* That this act shall only apply to any person who, at the time of receiving such assignment, was without notice of any fraud in the entry assigned, or in any annual proof made concerning the same: *Provided further,* That patent shall not issue to any such assignee unless he shall affirmatively establish, by his evidence under oath, good faith and lack of notice of fraud, and by the testimony under oath of himself and at least two wit-

2 REPORT OF ASSIGNEES IN GOOD FAITH OF DESERT LANDS.

nesses that expenditure in the total amount and cultivation and reclamation to the full extent required by law have been actually made and accomplished: *And provided further*, That nothing herein contained shall be construed to in any manner waive or avoid liability, on the part of the person committing the same, for any fraud or violation of the law."

STATEMENT OF OSCAR LAWLER, ASSISTANT ATTORNEY-GENERAL FOR THE INTERIOR DEPARTMENT.

The CHAIRMAN. We shall be glad, Mr. Lawler, if you will give us such information as you have with respect to the matter involved in a bill now before this committee, Senate bill 6636, for the relief of assignees, in good faith, of entries of desert lands.

Mr. LAWLER. The general situation with respect to such assignees, Mr. Chairman, developed in the course of trial of the criminal case recently held at Los Angeles, involving the Imperial Valley lands. It extended over a long period of time, and the general conditions there were extensively exploited.

The California Development Company diverts water from the Colorado River at a point in California just north of the international boundary line, through Mexican territory, and back to the Imperial Valley.

About 1902 it organized what are called mutual water companies, each covering a prescribed area, and numbered, I believe, from 1 to 8. Some of those have been consolidated, so that there are now, I think, five.

These companies maintain the local canal systems by means of which the water delivered by the California Development Company is distributed. The California Development Company entered into contracts with each of those concerns under which, in consideration of its agreement to provide and deliver water, all of the stock in the respective mutual companies was delivered to it. The California Development Company was then in the hands of and being promoted by a man named Heber, now dead, another man named Blaisiell, and some others whose names I do not now recall.

By some means, which perhaps are open to question, these promoters, or part of them, acquired portions of the stock of these mutual companies, for which, it is contended, they paid nothing. The only source of water supply in the valley is through the canals of the California Development Company.

Senator SMOOT. Did they not obtain control of a number of those companies?

Mr. LAWLER. No; I do not understand that they did. Of course the California Development Company had control, because under these contracts it acquired all of the stock.

The CHAIRMAN. That gave them control?

Senator SMOOT. But I understood that they obtained control even of the other companies. The individual members owned the stock subject to the California Development Company.

Mr. LAWLER. As to that I can not say positively, although it is my understanding that the control of these local companies did not in fact pass into the hands of those individuals. They, however, undoubtedly exercised a strong influence over them. Of course, the principal source from which the California Development Company derived funds was from the sale of stock of these mutual companies. These promoters organized the Imperial Land Company as a sales agent of the Mutual Water Company stock, and the two companies maintained joint offices in Los Angeles. Subagents for the sale of stock were employed, including some of the persons indicted for land frauds in the valley.

The Imperial Valley, in the early history of its development, was very inaccessible, and the trip to view the lands therein was difficult and expensive. The regulations required that the original entryman should swear that he had actually seen the lands. As the sale of stock was practically confined to parties who were acquiring, or desirous of acquiring, land, and the title was almost entirely in the Government, that was an obstacle to securing purchasers. To remove this difficulty entries were procured to be made by dummies, from whom assignments were taken, and the entries thus initiated were sold in connection with water stock.

Instead of selling the stock belonging to the California Development Company the promoters frequently disposed of the mutual companies, of which they had obtained possession by manipulation.

The CHAIRMAN. Selling the stock of those two companies?

Mr. LAWLER. Selling the stock in the mutual companies which had originally been acquired by the California Development Company.

Senator HEYBURN. What thing of value was behind that water company's stock?

Mr. LAWLER. There was nothing of value except the right to acquire water for the reclamation of the land. It was the only means by which the water could be obtained.

RELIEF OF ASSIGNEES IN GOOD FAITH OF DESERT LANDS. 3

Senator HEYBURN. Do I understand that the water-right location was north of the international boundary line on a stream that flowed out of the United States and returned again across the boundary line?

Mr. LAWLER. It was the Colorado River, which empties into the gulf of Lower California.

Senator HEYBURN. Did they consider that they could locate a water right and could claim the benefits of it after the stream had passed through a foreign country?

Mr. LAWLER. They had a concession from the Mexican Government.

Senator HEYBURN. But they claimed the water right under the lease of the California company I suppose?

Senator SMOOT. They had it under both.

Senator HEYBURN. An unusual complication arose there by the water returning. The stream passes out of the jurisdiction that grants the water right. I want to get at the bona fides of the thing.

Mr. LAWLER. That proposition was bona fide, I think. The concession from the Mexican Government was very broad.

Senator HEYBURN. It gave them the right to use the water?

Mr. LAWLER. Yes, and free, as I understand it, from any claim of the Mexican Government.

Senator HEYBURN. The stock value was based on the water right.

Mr. LAWLER. No; you misunderstand, I think, a little, the situation. The California Development Company appropriated the water.

Senator HEYBURN. Yes.

Mr. LAWLER. It built the main canals from the Colorado River across Mexican territory and back into California and to Imperial Valley, where it was delivered to the mutual water companies, the system of each of which covers a prescribed area.

Senator HEYBURN. That is, for the use of the water?

Mr. LAWLER. Yes.

Senator HEYBURN. I want to see whether the stock was based on the water-right location, or whether it was based on the water stream that came back into the country. I want to get at some basis for the value of the stock.

Senator FLINT. As I understand it, this is the situation in reference to the value of the stock: Every local water company made a contract with the California Development Company that this company would distribute water to the head gate of the Imperial Water Company for so much a measurement of some kind, and that was the basis on which the distributing company or Imperial Water Company fixed the value for water with this California Development Company.

Senator HEYBURN. Did each of those companies issue stock?

Mr. LAWLER. Each company had a contract. There was at one time eight different companies, each of which had a contract with the California Development Company by which the latter obligated itself to furnish sufficient water for the district.

Senator HEYBURN. They purchased from the development company the right to get this water?

Mr. LAWLER. Yes.

Senator HEYBURN. And they agreed to deliver the water to them?

Mr. LAWLER. Yes.

Senator HEYBURN. I want to see where this stock got its value.

The CHAIRMAN. Is this Imperial Valley what is called the Salton Sea?

Mr. LAWLER. It is to the southward of that.

The CHAIRMAN. You may proceed.

Mr. LAWLER. The stock of these mutual companies sold at prices ranging from \$6.75 a share in 1902, to as high as \$20 or more in later years. Each share entitles the owner to sufficient water to irrigate an acre of land.

Senator HEYBURN. How did he pay for that stock?

Mr. LAWLER. Either in cash or on time; if the latter, deferred payments were secured by assignment of the stock as collateral and a mortgage or conveyance of the desert-land entry.

Senator HEYBURN. There is the condition of forfeiture back to the company issuing it. In other words, this company made a contract for selling stock subject to the forfeiture, and when the forfeiture attached, the stock would go back to the company again, would it not?

Mr. LAWLER. To the California Development Company. The California Development Company, so far as I know, acquired no land. The mutual companies were distributing agencies, as it were, of the water. The principal capital of the California Development Company was derived from the sale of the stock of these mutual water companies.

Senator HEYBURN. Did they issue no stock of their own?

4 REPORT OF ASSIGNEES IN GOOD FAITH OF DESERT LANDS.

Mr. LAWLER. Oh, yes, it had stock, but by "capital" I mean money. The building of the canals was largely accomplished by means of the money derived from the sale of the stock of these mutual water companies.

Those sales of stock were made, almost invariably, upon terms of \$2 a share down, I think, and the balance in annual installments, the purchaser executing back an assignment of the stock and the entry which he had procured. If he were a primary entryman, that is, if he had made the entry himself, he would execute an assignment back of his entry and an assignment of the capital stock he had secured for the payment of the purchase price of the capital stock. It was asserted during the trial referred to, but not inquired into, that they had never foreclosed any mortgage on any shares of stock or upon any entry in the valley.

The stock increased in value so rapidly that there was no occasion for an individual to forfeit his stock. He could readily find a purchaser.

Annual proof is required to be made of the expenditure of a dollar per acre per year. If a purchaser was not found for one of these assignments of a dummy entry during the year, the dummy would be procured for a small sum to go to the land office and falsely swear that he had made the required expenditure in the purchase of stock. That would maintain the status quo, as it were, of the particular entry until the next annual proof was due or until a purchaser of the entry might be found in the meantime.

Senator HEYBURN. As to the forfeiture in the event of not expending that dollar an acre, is it automatic?

Mr. LAWLER. Yes.

Senator HEYBURN. And it is effected without any procedure?

Mr. LAWLER. Yes. I will give you an illustration of a concrete case of the sale of one of these entries which was fraudulently initiated:

A number of years ago a man named Sturgis, a farmer living at Ventura, bought two entries, covering each 320 acres, together with the necessary water stock. He paid \$12,000, of which, as I recall, about \$1,000 was for the purchase of the stock. He bought one entry for his son and the other for another member of his family. The purchasers have expended a large amount of time and money in improving and developing the land, they being perfectly honest and having no knowledge whatever of the fraudulent character of the entry.

A man named Skinner became apprised of the practice of procuring dummy entries and instituted a series of contests, which he evidently used for blackmailing purposes. He is now in jail in Los Angeles. He would go to parties holding desert entries by assignment and either institute contests based upon the original fraud or require a price for refraining therefrom. As it was testified at the trial mentioned that 75 or 80 per cent of the entries in the valley are now held by assignees, the effect of such proceedings upon the stability of titles can be readily imagined.

Another man, named Silliman, formerly of New York, whose wife was in bad health, bought an assignment of an entry covering what he now calls the Palm ranch. He told me that he had expended some \$20,000 in the improvement of it. The original entry was made by a man named Milton Webster, now dead, but who was the "procurer," as it were, of dummies for the Imperial Land Company. Upon question being raised as to the title, the former entry was relinquished and new entry made.

A young man named Davis came over from Arizona and bought a piece of land, assuming a note for \$2,400 as the purchase price of water stock, and paid about \$3,000 in cash.

The dummy who made the entry in that case was named Pierce. The fraud was rank, but Davis had absolutely no knowledge thereof and paid the purchase price and expended a large additional sum in improvements in perfect good faith. The department, since the amendment of 1891, has held assignments of desert entries, authorized and recognized them as valid transfers of title. If that attitude is correct, the assignee would, according to some of the decisions, take title freed from any concealed defects of which he had no notice.

These assignments were made the basis of barter and speculation to a considerable extent. Some men would assign their entries in order to go into other localities, while others, as I am advised, engaged in the business of buying and selling assignments, without regard to the improvement of the land.

Senator NELSON. There is this development company, and then there is the land company.

Mr. LAWLER. Yes; the Imperial Land Company.

Senator NELSON. And the California Development Company.

Mr. LAWLER. Yes.

The CHAIRMAN. Are the same men interested in both companies?

Mr. LAWLER. Not at the present time. They were originally.

RELIEF OF ASSIGNEES IN GOOD FAITH OF DESERT LANDS. 5

The CHAIRMAN. What connection has the Imperial Land Company with this matter?

Mr. LAWLER. The Imperial Land Company was a sales agent of the stock of the mutual water companies which was acquired by the California Development Company under these contracts to which I have referred by which the development company agreed to deliver water to the mutual companies.

The CHAIRMAN. Are either of the railroads there interested directly or indirectly in this scheme?

Mr. LAWLER. I can state to you all I know about that matter.

A few years ago a tremendous break occurred in the Colorado River, due to the inartificial manner, as is claimed, in which the California Development Company had constructed its diversion or head gates. To meet this condition a large expenditure of money was necessary.

The California Development Company's treasury was empty; it having, as I understand, been recently established in actions brought by those now in control of the California Development Company against at least some of the promoters, that in addition to the land frauds mentioned, the latter had sold to themselves at a discount of from 25 to 50 per cent the secured contracts for the purchase of stock in the mutual water companies, waiting to pay the purchase price until the party came in to pay the company.

Recently there was paid over to the company, in compromise of an action against Blaisdell and others for alleged unlawful diversion of company property, \$125,000 in money and property, and I was told by a gentleman at present connected with the company that there was a couple of hundred thousand dollars additional which could have been secured but for the interposition of the statute of limitations.

As a result, when the break occurred in the river the treasury of the California Development Company was empty. They tried, ineffectually, to stop the break. The water was running into the Salton Sea, causing the latter to rise and encroach upon the track of the Southern Pacific Railroad Company; \$200,000 was borrowed from the latter, it apparently being induced thereto in order to save its own property.

I am told that in the course of litigation, recently tried, to recover judgment for the money thus loaned, it was testified that although the Development Company had solicited the loan from the Southern Pacific Company, the resolution and contract for the borrowing thereof had been intentionally so drawn as that repayment could not be enforced. The court held, however, that it was enforceable. That indicates something of the manner in which the affairs of the company were manipulated.

A very large amount of money was required to be expended by the Southern Pacific Company as a matter of self-protection to stop the break, as a result of which it was required finally, as I understand it, to practically take over the affairs of the California Development Company, and Blaisdell, the Hebers, and their associates were eliminated, and I understand the Southern Pacific Company now controls the California Development Company.

Senator CLARK, of Wyoming. By virtue of the stock being turned over?

Mr. LAWLER. I understand it took over the stock of the company when its lien for the repayment of the loan was enforced. I am not familiar with the details.

Senator SMOOT. When they first made the loan of \$200,000 the Southern Pacific Railroad took 51 per cent of the California Development Company's stock as collateral security for it, with an agreement that they should have a majority of the board of directors, and the Southern Pacific Company appointed at that time a majority of the board of directors to represent them in the California Development Company. That was at the time of the first advance.

Senator CLARK, of Wyoming. Was there an agreement to reconvey?

Senator SMOOT. Yes; in case of payment. That was the first advance they made. Then they kept on advancing money until nearly a million dollars had been expended. Then the big break occurred, when the Government took a hand in it. Then, of course, the Southern Pacific claimed that they had expended about \$1,600,000 to stop that break. That is the claim that they have against the Government.

The CHAIRMAN. And they have not been reimbursed?

Mr. SMOOT. No.

Senator HEYBURN. Was not the appropriation which was made intended to cover all these expenses?

Senator FLINT. No money has been appropriated.

Senator SMOOT. Not at all.

Senator HEYBURN. The Government did make an appropriation to stop that break.

Senator FLINT. Not a dollar.

The CHAIRMAN. You may proceed, Mr. Lawler.

6 REPORT OF ASSIGNEES IN GOOD FAITH OF DESERT LANDS.

Mr. LAWLER. The present relation of the Southern Pacific Company to the California Development Company constitutes, so far as I know, the only interest that the railroad company has in lands in the Imperial Valley.

So far as I know, absolutely no land whatever is owned by the California Development Company in the valley except the sites upon which its offices and its various works are situated; and the present people connected with the company, so far as I am advised, have absolutely no interest there except in the company itself.

The CHAIRMAN. They have interests in these assignments made and these mortgages.

Mr. LAWLER. Yes; wherever those mortgages exist. As before stated, it was testified that not one of those mortgages had been foreclosed; that there was no necessity for it. Because of the constant increase in the value of the property the mortgagor could always find a purchaser.

Senator CHAMBERLAIN. Are these mortgages still unpaid?

Mr. LAWLER. I believe many of them are.

Senator FLINT. Do you know whether the California Development Company have any mortgages now?

Mr. LAWLER. I believe that most of them are held by the Imperial Land Company, and, possibly, by some of the private parties, but as to that I am not advised.

The CHAIRMAN. If the Imperial Land Company holds these mortgages and assignments, the title might inure to that company, might it not?

Mr. LAWLER. In the event of foreclosure they might acquire it; yes, sir.

The CHAIRMAN. They would have both the assignment and the mortgage.

Mr. LAWLER. Yes.

The CHAIRMAN. One would be in the nature of an equitable mortgage and the other a regular mortgage.

Mr. LAWLER. Yes.

Senator SMOOT. If they foreclose they would get the money.

The CHAIRMAN. Yes; they would have to foreclose.

Senator CHAMBERLAIN. How much land is covered by the Imperial Land Company's claim and the California Development Company?

Mr. LAWLER. The California Development Company has to my knowledge absolutely no land in the valley except such as is covered by its works. If it still retains any of those mortgages, I do not know the extent to which its holdings in that respect would go.

The CHAIRMAN. Would it not be a good plan here, if we protect these bona fide assignees, to exclude from that protection the Imperial Land Company and this development company; in other words, protect the actual settlers, ratify their rights, but not the rights of these companies.

Senator FLINT. That is what the bill does. The Imperial Land Company does not own any land.

The CHAIRMAN. These men have assigned to them.

Senator FLINT. My opinion is that the Imperial Land Company has no land at this time.

Senator CLARK, of Wyoming. They get possession either of the land or of the money.

Senator FLINT. Yes.

Senator HEYBURN. Of which company has the Southern Pacific Company got the stock?

Mr. LAWLER. The California Development Company.

Senator HEYBURN. The Southern Pacific Company has so far received nothing of any value other than the stock.

The CHAIRMAN. They control the stock of the Imperial Company.

Senator FLINT. The Southern Pacific Company, in proceedings instituted, foreclosed every claim against the California Development Company.

Mr. LAWLER. There has been a receiver appointed.

Senator SMOOT. When the receiver was appointed the testimony that was given by the president of the California Development Company was that they were not insolvent—that they had property enough, if allowed to handle it, to more than pay all their debts and make good.

Mr. LAWLER. Was that recently?

Senator SMOOT. When the receivership proceedings were instituted.

Mr. LAWLER. There was a receiver appointed when I was in California last December or January.

Senator SMOOT. Then I guess that was the second receivership.

Senator HUGHES. That was a foreclosure receivership.

Senator FLINT. Whether a sale was then made I am not certain.

Senator HEYBURN (to Senator FLINT). I understand, then, that if we pass this bill the Southern Pacific takes nothing by virtue of our action in passing this bill, or does it confirm the title in them?

RELIEF OF ASSIGNEES IN GOOD FAITH OF DESERT LANDS. 7

Senator FLINT. My understanding is that it will confirm the title in no one except bona fide settlers.

Senator HEYBURN. They would receive nothing either directly or indirectly?

Senator FLINT. Well, indirectly in this way, that the country would be developed; to that extent they would be benefited.

Senator HEYBURN. Could the Southern Pacific, under its charter, become the owner of a water right of that kind?

Mr. LAWLER. In this case only by the ownership of stock in another company.

Senator HEYBURN. Could they own such stock?

Senator FLINT. The peculiar condition which exists there is this: That under the laws of our State the supervisors outside the incorporated cities and the municipal bodies within incorporated cities must fix annually the rate at which water must be sold. Now, this company being a Mexican company that makes this contract to distribute to the various water companies, it has been contended by them that they were not subject to that provision, and I presume that the Southern Pacific owns the stock in this Mexican company.

Senator HEYBURN. Then the Southern Pacific has become the controlling power over this water by reason of its contract with the Mexican company?

Senator FLINT. I think so.

The CHAIRMAN. Is this Imperial Company a Mexican corporation?

Senator FLINT. There is a Mexican company and an American company. The company organized under the laws of some State or Territory within the United States owns all the stock of the Mexican corporation. Am I correct about that, Mr. Lawler?

Mr. LAWLER. Yes. They were required to organize under the Mexican law in order to get the rights from the Mexican Government, but I think Senator Flint is mistaken about water rights. I do not understand that the contention that these companies are not subject to the regulatory features of the California statute is based on the fact that there is a Mexican corporation involved, but it is because these distributing companies are mutual corporations, maintaining their systems by assessments, which are presumably for the purpose of covering the mere expense of maintenance. The California Development Company, as I understand, derives no revenue from these mutual companies except from the sale of the stock.

Senator FLINT. But it is contended that the rate which the Mexican company charges to the local company is not subject to the regulation of our state laws, and the question whether that is a reasonable rate that the Mexican company is charging to the local company is not subject to the constitution and laws of our State.

Senator HEYBURN. Can the Southern Pacific control a Mexican company by virtue of its ownership of the capital stock?

Mr. LAWLER. Yes.

Senator HEYBURN. So that really the Southern Pacific would be protected in its ownership of that water right by reason of either the Mexican company's ownership or the other ownership.

Senator FLINT. That is it.

Senator HEYBURN. I would not like to see this bill result in a provision that would repay the Mexican Government or its assignee, that being the Southern Pacific Railroad, but I would like to see this bill confirm the bona fide occupants of the property.

Senator FLINT. That is what I want done.

Mr. LAWLER. I do not understand that this bill would accomplish anything in so far as the California Development Company is concerned at all, except the incidental advantage that would accrue to that company from the development of the valley.

Senator HEYBURN. That is indirect.

Mr. LAWLER. Yes.

Senator HEYBURN. I am in sympathy with the work of confirming the title in the possessors of the land, but I am not in sympathy with the idea of having the owner of the property (the company) free from the charges of the United States for the water.

Mr. LAWLER. I do not think they could do that.

Senator HEYBURN. You will find that they will, if they are not restrained in their charge for the water.

The CHAIRMAN. How many acres are involved, approximately, in this matter?

Mr. LAWLER. I could not say, except comparatively. It was testified in the trial heretofore mentioned that probably 75 to 80 per cent of the entries made in the Imperial Valley had been assigned, so that it is not improbable that the title to three-fourths of the entered land there is now held by assignees who have not yet secured patents.

8 REPORT OF ASSIGNEES IN GOOD FAITH OF DESERT LANDS.

The CHAIRMAN. Approximately, how many acres do you think?

Mr. LAWLER. I could not tell you that. It is a large area. The information is no doubt available.

The CHAIRMAN. Are those men who have taken these assignments occupying this land?

Mr. LAWLER. I think most of them are; yes.

The CHAIRMAN. Why would it not be better to ratify the rights of these actual occupants and go no farther?

Senator GAMBLE. And specify them by name?

The CHAIRMAN. We could specify them by class.

Senator FLINT. We can not do that, because some are fraudulent and some are not.

Senator HEYBURN. There is a continual charge for water against these lands, is there not?

Mr. LAWLER. Yes; I think the contract of the California Development Company provides for an annual rate. The assessment of the mutual companies is a dollar a share per year.

Senator HEYBURN. How is that paid?

Mr. LAWLER. Fifty cents of it, I understand (I am not certain about this), is devoted by the mutual company to its maintenance and expense and the other fifty cents is paid for the delivery of the water to the California Development Company.

Senator HEYBURN. That, now, is the Southern Pacific Company, as they own the other company, so that the Southern Pacific Railroad will be the perpetual beneficiary of this bill to the benefit of 50 per cent.

Mr. LAWLER. Well, as owner of the water I presume it will always make a charge.

Senator HEYBURN. So that one-half of what the settler pays will go to the water company, one-half of which the Southern Pacific Company gets.

Mr. LAWLER. Necessarily so; yes. But do not accept any statement of mine in that respect as a basis of regulation, because my information is not complete.

Senator HEYBURN. We may take it as a basis for the acquisition of further information.

Senator CHAMBERLAIN. Do you, as representative of the Department of Justice, recommend this legislation?

Mr. LAWLER. Yes. I think there is crying necessity that the situation in which the honest people in the valley find themselves should be relieved. It is a terrible place in which to live, the thermometer reaching 130° in the summer time; they have expended their energies and money under very adverse conditions, and have been for nearly ten years waiting such definite settlement of affairs as that they can get title. Affairs in the valley are badly disorganized and progress impeded as a result of the embarrassment arising from these conditions.

Senator CHAMBERLAIN. You have read this bill carefully?

Mr. LAWLER. Yes.

Senator CHAMBERLAIN. And you think it will do?

Mr. LAWLER. Yes. There is one suggestion that has occurred to me since the bill was drawn. I do not know that it is necessary, but it may be well to put it in as a precautionary measure. Undoubtedly the quantity of land subject to acquisition by an individual is limited to 320 acres. The department has required in the affidavit of the assignee the statement that he does not then hold any quantity of land which, when added to that sought to be acquired by the assignment, would aggregate more than that amount. It might be well as a precautionary proposition to incorporate in the bill the proviso: "Provided further, That nothing herein contained shall be construed to authorize any person to hold by entry or assignment any quantity of land in excess of the amount authorized by law prior to the passage of this act."

I might say that something that has contributed to the troubles of these people is this: Contrary to the practice that prevailed in the office, Judge Wellborn has held that assignments of desert entries are absolutely void. That was in a case where prosecution for perjury was based upon an alleged false affidavit of annual proof; the court sustained demurrer to the indictment, holding that the assignment being unauthorized, the proceeding was void and perjury could not be predicated thereon. The troubles of the people in the valley are aggravated by that situation.

Senator HEYBURN. That is, the effect of it after that is that when they get this they will not then have more 320 acres of land.

Mr. LAWLER. Yes; and while I think the limitation is already fixed, it may be well to put that in.

The CHAIRMAN. Would it not be well to put in here that no person shall be entitled to have confirmed more than one of these entries? A single entry is 320 acres, is it not?

RELIEF OF ASSIGNEES IN GOOD FAITH OF DESERT LANDS. 9

Mr. LAWLER. As a rule. There are many people there who made entries besides these fraudulent ones. A man would enter whatever amount of land he could afford to pay for and reclaim.

Senator CLARK, of Wyoming. But 320 acres is the maximum.

Mr. LAWLER. Yes.

Senator HEYBURN. My amendment is, after line 8 of the bill, to add "if he be a qualified entryman, and not the owner of the land in excess of 320 acres, including such entry."

That is the amendment I offered to this bill. That would cover both these points.

Senator FLINT. I have no objection to that, and I think it ought to go further and say that the person who takes this assignment ought to be one who had made entry in the first instance.

Mr. LAWLER. There is this objection to that: The act of 1891 provides that no person shall be entitled to make entry of desert land unless an inhabitant of the State in which the land sought to be entered is located. Some of those lands were obtained by parties who at the time were nonresidents. The law never did require residence on desert land, and as a consequence parties from various parts of the country bought these assignments.

Senator HEYBURN. I think we shall have to waive that provision. It might nullify a good many of these entries.

Mr. LAWLER. I think that if a provision were inserted such as was suggested by the chairman, eliminating in the case of corporations, it would do no harm.

The CHAIRMAN. I would not like to have the titles of those companies confirmed in any manner, but I would like to see the parties who got these lands in good faith protected.

Senator FLINT. That is all I want.

Mr. LAWLER. Except that possibly limiting it to occupants may be limiting it too much, because the law has never required occupancy.

The CHAIRMAN. I know that.

Mr. LAWLER. The last proviso of page 1 of the bill, beginning at line 12, reads:

"Provided further, That patent shall not issue to any such assignee unless he shall affirmatively establish, by his evidence under oath, good faith and lack of notice of fraud, and by the testimony under oath of himself and at least two witnesses that expenditure in the total amount and cultivation and reclamation to the full extent required by law have been actually made and accomplished."

Senator HEYBURN. Would this amendment that I have suggested be satisfactory to the department: On line 8, after the word "shall," insert "if he be a qualified entryman and is not the owner of land in excess of 320 acres, including such entry."

Senator CLARK, of Wyoming. Does our desert land law prohibit the owner of 320 acres acquiring title under the desert act? I know that the homestead act does, but does the desert act? I hardly think so.

Senator HEYBURN. I would not diminish a man's right, but I would confine it under this act to that amount.

Mr. LAWLER. He ought not to be allowed to have any more than the law now allows.

Senator FLINT. Under the desert act you have to make an affidavit that you do not own any more than so many acres of land.

Senator HEYBURN. In the homestead act there is a provision that the home seeker make an affidavit.

Mr. LAWLER. I do not know that I understand exactly what the Senator means.

Senator HEYBURN. What are the limitations of land that a man may own?

Mr. LAWLER. You mean in addition to the desert act? I do not think there is any.

Senator HEYBURN. Do you mean that if a man already owns 10,000 acres he can take up more?

Mr. LAWLER. I think so.

The CHAIRMAN. The original desert act—

Senator HEYBURN. Was there a limitation in that?

The CHAIRMAN. No such limitation as you speak of.

Senator HEYBURN. That last part of my amendment was based on the idea that there was in the desert act a limitation corresponding to that in the homestead act.

Senator FLINT. What limitation?

Senator HEYBURN. If he be a qualified entryman. That leaves out a corporation. A corporation can not enter.

Mr. LAWLER. This nonresident feature you speak of would be affected by that provision.

Senator CLARK, of Wyoming. He has to reside in the State.

Mr. LAWLER. Why could not your provision about corporation be covered by saying that "any person other than a corporation" in the third line.

10 RE. ART OF ASSIGNEES IN GOOD FAITH OF DESERT LANDS.

Senator HEYBURN. That he should not exercise the right more than once. The chairman suggested very properly that these entrymen should not have any greater right than any other entrymen. My idea was that this should eliminate or waive the right of residence in the State—waive that and simply require that he should be a man that entered this land originally.

Mr. LAWLER. My suggestion was to amend by incorporating this proviso: "Provided further, That nothing herein contained shall be construed to authorize any person to hold by entry or assignment any quantity of land in excess of the amount authorized by law prior to the passage of this act."

Senator HEYBURN. How about the qualified entryman—that he should be a citizen of the United States, and so forth.

The CHAIRMAN. He should be "qualified" to make the particular entry of the land which he now holds as assignee.

Senator HEYBURN. And at the time that we confirm it.

Senator CHAMBERLAIN. Might not that work a hardship sometimes? Take the case of a man that went from Nevada and took an assignment of a claim in this valley. Suppose he had exercised his rights up in Nevada and had obtained right to desert lands in the valley, and then went to this place and exercised this right.

Senator CLARK, of Wyoming. This right is exercised not on the theory of the homestead laws, but that you give the privilege to a man because of the fact that he improves what would otherwise be worthless land. That is the theory of the desert-land act.

Senator HEYBURN. I would see to it that this was such a transaction as would bar him for the future from exercising the right. I would waive the residence in the State and the exercise of his desert entry somewhere else, provided he disposed of it. I would not allow him to have two.

Mr. LAWLER. Does not my suggested amendment limit the quantity that he may hold? It says, "Provided further, That nothing herein contained shall be construed to authorize any person to hold by entry or assignment any quantity of land in excess of the amount authorized by law prior to the passage of this act."

Senator GAMBLE. If there were a limitation, that certainly would cover it.

Mr. LAWLER. There is a limitation to 320 acres.

The CHAIRMAN. In the pamphlet published by the Land Office I find this statement: "Under the original act of March 3, 1877, a person was allowed to enter one section, or 640 acres, of desert land, but by the act of March 3, 1891, no person is allowed to enter more than 320 acres of desert land. Moreover, by the act of August 30, 1890 (26 Stats., 391), no person is permitted to acquire title under all the agricultural-land laws to more than 320 acres; therefore, if a person has, since August 30, 1890, acquired under any of the laws except the mineral laws 320 acres or is at the date of his application claiming 320 acres under said laws, he is not authorized to make a desert-land entry for any quantity whatever."

Senator CLARK, of Wyoming (to Senator Heyburn). You do not want it to read "a qualified entryman?"

Senator HEYBURN. That is the reason I made it date as of the time of confirmation.

Mr. LAWLER. Assume the case of a man going from New York and buying one of these assignments and putting in improvements. He may continue to reside in New York, but he is improving the land and reclaiming it in the manner required by law. He may go there at a later time.

Senator HEYBURN. I understand your point.

Mr. LAWLER. The department has never ruled or held that a person who was a nonresident of the State could not acquire by assignment a desert land entry.

Senator HEYBURN. In view of this opinion of the court, we must make some provision for these people.

Mr. LAWLER. With the bill as at present drawn, you see on lines 6 and 7, page 1, that it says, "which assignment has been accepted and recognized by the Interior Department as a proper transfer of such entry."

The department has not recognized as proper any assignment where the party can not make the oath required by law that he did not own more than 320 acres of land.

The CHAIRMAN. I would suggest, in line 3, an amendment to meet the case of corporations.

Senator CLARK, of Wyoming. "Other than a corporation."

The CHAIRMAN. That "any person other than a corporation."

Senator CLARK, of Wyoming. I do not know that that is really necessary if you have in this other qualification as to a "qualified entryman."

Senator HEYBURN. Why not substitute "a citizen of the United States?" A corporation is not a citizen of the United States,

RELIEF OF ASSIGNEES IN GOOD FAITH OF DESERT LANDS. II

Senator CLARK, of Wyoming. I do not know about that. Some corporations are citizens of the United States.

Senator FLINT. Why not insert the words that the chairman suggests "that any person other than a corporation?"

The CHAIRMAN. That would fix it, and then there would be the other proviso suggested by Mr. Lawler. Will you read that again, Mr. Lawler?

Mr. LAWLER (reading). "Provided further, That nothing herein contained shall be construed to authorize any person to hold by entry or assignment any quantity of land in excess of the amount authorized by law prior to the passage of this act."

Senator HEYBURN. If we pass this act will it be sufficient in itself to operate confirmation of title, or will the party still have to make proof according to these blanks that you have?

Senator FLINT. He will have to make proof.

Senator HUGHES. Judge Welborn's decision held that the oath can not be regarded as perjury, because the department made regulations concerning things not required by law.

Senator FLINT. Under Judge Welborn's decision there is no assignment permissible at all. I have read his decision, and I am inclined to think he will be sustained.

Mr. LAWLER. It is a very close question.

The CHAIRMAN. He should make the same kind of proof as he would be required to make assuming that his assignee, the original entryman, had had a good and valid right, with no fraud in it and he was authorized under the law to assign.

Senator HEYBURN. Did Judge Welborn hold that there was fraud in it?

Senator FLINT. No. Judge Welborn held that the assignment was invalid.

Senator HEYBURN. The important matter is to fix these titles so that they shall not be open to question hereafter.

The CHAIRMAN. I would suggest that on line 8 of page 1, after the word "acquired," there should be added these words: "shall be entitled to complete the entry so acquired conformably to the law in force when the assignment was made."

Senator HEYBURN. That would require him to be a resident. We shall have to relieve him of that requirement.

The CHAIRMAN. Do you think that would require him to be a resident?

Senator HEYBURN. By requiring him to be in conformity with existing laws you include the residence.

The CHAIRMAN. Let that go, then.

Senator CHAMBERLAIN. One thing I would suggest. We have been discussing this with reference to the Imperial Valley. Here is a general law—

Senator FLINT. I was going to suggest an amendment to that.

Mr. LAWLER. The valley covers the entire county.

Senator HEYBURN. This act is very special.

The CHAIRMAN. Yes. It should be limited to that county. Is there anything further you would like to state, Mr. Lawler, about this matter?

Mr. LAWLER. No. There is nothing that I think of.

I would say, however, that the chairman wrote us a letter asking for a list of all the entries that would be affected by the bill, but we found that it would involve such an immense volume that we did not send it; in the Imperial Valley alone there are upward of 5,000 entries and many of the records are now out in California in court, and probably will not be returned very soon.

The CHAIRMAN. I did not think there were so many entries as that.

Mr. LAWLER. They would not all be affected by this bill, but in order to give you the information you asked for we would have to send the whole list.

Senator FLINT. I will say "that any person other than a corporation who has heretofore obtained by assignment a desert-land entry."

The CHAIRMAN. After the word "entry?"

Senator FLINT. Yes.

Senator HEYBURN. Have these assignments been recognized by the Interior Department?

Mr. LAWLER. Yes; ever since 1891, and they are now recognized because that decision of Judge Welborn is on appeal to the Supreme Court. There is a collateral question on which it may be decided, however, and the point here suggested may not be determined by that court.

(The three amendments were then agreed to, and the bill as thus amended was, on the motion of Senator Clark, of Wyoming, ordered to be favorably reported.)

Senator FLINT. I desire, Mr. Chairman, to place in the record to be printed with the proceedings of this hearing a letter from the Los Angeles Chamber of Commerce inclosing and indorsing a bill, a copy of which I hand you.

12 PORT OF ASSIGNEES IN GOOD FAITH OF DESERT LANDS.

The letter and proposed bill are as follows:

LOS ANGELES CHAMBER OF COMMERCE,
Los Angeles, Cal., February 10, 1910.

HON. FRANK P. FLINT, Washington, D. C.

DEAR SIR: An act for the relief of bona fide reclaimers of desert lands has been called to the attention of the chamber, copy of which I inclose herewith. It has been carefully considered by our board of directors, and was unanimously indorsed at the regular meeting held yesterday, the 9th, and I was instructed to request you to use every effort toward the passage of this act by Congress.

Yours, truly,

H. B. GURLEY, Assistant Secretary.

"AN ACT For relief of bona fide reclaimers of desert lands.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That an act entitled 'An act to provide for the sale of desert lands in certain States and Territories,' approved March 3, 1877, and amended March 3, 1891, is amended by adding thereto the following section:

"SEC. 9. That the records of the Land Office shall be conclusive evidence of the validity of a desert land entry when the claim passes by assignment to a qualified entryman, and no defect of original entry shall impair the right to final certificate and patent of an innocent purchaser (without notice) of such assignment, provided such assignee shall have complied in good faith with the requirements of this act."

Senator FLINT. In forwarding me a copy of the same bill Mr. Carter, president of the Imperial County Chamber of Commerce, certifies that—

"The Imperial County Chamber of Commerce hereby indorses and urges the adoption of the above act.

"GEO. A. CARTER, President.

"DECEMBER 21, 1909."

Senator FLINT. I forwarded the draft of that bill to the Secretary of the Interior, and I present a copy of his letter in reply.
(The letter referred to is as follows:)

DEPARTMENT OF THE INTERIOR,
Washington, February 3, 1910.

HON. FRANK P. FLINT,
United States Senate.

SIR: I have the honor to acknowledge receipt of your request of January 19, for suggestions as to the advisability of the enactment of a bill proposed by the settlers of the Imperial Valley for the validating of desert-land entries, a copy of which you kindly furnished with your letter.

In reply, I will say that investigations made by this department and the General Land Office show that not only in the Imperial Valley but in other localities persons have procured others to make a large number of desert-land entries in their interests, taking assignments in blank from the entrymen and subsequently supporting such entries by false proof as to annual expenditures for the reclamation of the land, when in fact no such expenditures had been made. These entries and proofs are now on file in the General Land Office and would, under the terms of the proposed bill, be validated.

I am therefore of opinion that legislation of the character suggested should not be enacted.

Very respectfully,

R. A. BALLINGER, Secretary.

Senator FLINT. I also present a letter I received from the Secretary of the Interior in reply to a request of mine that he draft a bill that would give the settlers the relief that they desire.

(The letter and draft referred to are as follows:)

DEPARTMENT OF THE INTERIOR,
Washington, February 17, 1910.

HON. FRANK P. FLINT,
United States Senate, Washington, D. C.

MY DEAR SENATOR: Response to yours of February 10, concerning appropriate legislative measures for the relief of settlers in the Imperial Valley who are innocent

RELIEF OF ASSIGNEES IN GOOD FAITH OF DESERT LANDS. 13

purchasers by assignment of entries fraudulently made, inclosed herewith find draft of bill which, in the opinion of the department, accords the relief desired, and at the same time will protect the Government against perpetrators of fraud in these matters profiting thereby.

Very truly, yours,

R. A. BALLINGER,
Secretary.

"AN ACT For the relief of assignees in good faith of entries of desert lands.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who has in good faith heretofore acquired, by assignment, a desert-land entry, which entry is regular upon its face, in the belief that he was obtaining valid title thereto, which assignment has been accepted and recognized by the Interior Department as a proper transfer of such entry, shall be entitled to complete the entry so acquired: *Provided, however,* That this act shall only apply to any person who at the time of receiving such assignment was without notice of any fraud in the entry assigned or in any annual proof made concerning the same: *Provided further,* That patent shall not issue to any such assignee unless he shall affirmatively establish, by his evidence under oath, good faith and lack of notice of fraud, and by the testimony, under oath, of himself and at least two witnesses that expenditure in the total amount and cultivation and reclamation to the full extent required by law have been actually made and accomplished: *And provided further,* That nothing herein contained shall be construed to in any manner waive or avoid liability on the part of the person committing the same for any fraud or violation of the law."

SENATOR FLINT. I also present an editorial from the Los Angeles Times, giving a statement of the situation in the valley.

(The editorial referred to, of date Feb. 8, 1910, is as follows):

"CONGRESSIONAL ACTION NEEDED.

"The position of the settlers in Imperial Valley involves cruel injustice if the letter of the law is maintained. Of all the cases of recent date it is a conspicuous one wherein 'the letter killeth, but the spirit giveth life.' In the industrial section of The Times last Sunday reference was made to this matter in an article based upon an address of Congressman Smith, in whose Congress district these settlers have their property. We set forth the contention of the settlers because it appeared to us just, and we gladly add our editorial indorsement.

"The desert-land act, as it is generally understood, was passed by Congress in order to permit the reclamation of lands not suitable in their natural condition for ordinary agricultural purposes. The provisions of the law are few and generally simple. A settler appears before the official of the land office and swears that a certain-described portion of the public domain has been inspected by him and is unsuitable for ordinary agricultural purposes in its condition and that he proposes to file upon it under the desert-land act. This requires of him that some time within three years he shall spend an aggregate of \$3 per acre upon his claim in bringing water and making other improvements upon it such as to fit it for agricultural use. Then, during the fourth year, he must plow at least one-eighth of his holdings, and upon complying with these provisions of the law a patent shall be issued to him.

"In a recent case, where a man was tried for perjury in connection with this desert-land act, Judge Weilborn, of the federal court in the district in which this land lies, took the desert-land act, as the lawyers say, 'by its four corners,' and held that no assignment of lands taken up under this act could be made by the original settler until after his patent had issued. There is only one clause in which the word 'assignee' occurs, and that is acknowledged by lawyers learned in this matter to be ambiguous. The case decided by the judge here has been appealed and is now before the Supreme Court.

"The General Land Office, ever since the desert-land act was passed, has taken a different view of the law. It has permitted and confirmed assignments of lands originally taken up under this law time and again. It was under this practice of the General Land Office, as we understand it, that this Imperial Valley land in numerous cases was transferred from the original owners to purchasers of the rights. As the memorial to their Congressmen by the settlers sets forth, all the data they had to go by were the records in the land office in this city. There is no denying their claim, that they made these purchases in good faith, that they have complied in every respect with the law as they understood it.

14 REPORT OF ASSIGNEES IN GOOD FAITH OF DESERT LANDS.

"Even should the Supreme Court sustain the decision rendered by Judge Wellborn, it will not follow, we understand, that these settlers must necessarily lose their holdings in the Imperial Valley. From time immemorial it has been the policy of the Government (a perfectly right and just policy) to protect the honest, bona fide settler on public lands in all his rights. No matter what the conduct of the original settler was or what his intention, the Government has not been fastidious in following the matter back to its source when satisfied that the owner of the land had used due diligence to ascertain if the title was good, had purchased in good faith and gone on complying with all the provisions of the law, developing for himself an American homestead for the support of an American family.

"Of course there remains the age-long principle of law that where an act has its inception in fraud the fraud will follow the case through all ramifications and can only be healed by the act of the Government, either condoning the offense because of the established honesty of the present holder or by specific legislation by which the original illegality may be validated.

"These cases in the Imperial Valley coming under this head are very numerous. The settlers have undergone great hardships and have reclaimed from a desert condition, at great expense of money, time, and toil a large area of territory now raised to a level of high value. What they ask is the passage of an act of Congress which will recognize their good faith in the premises, their great struggle against odds to reclaim this desert land and the success of their toil and skill, and will establish them in a clear title to their holdings.

"It would seem as if this were the only effective way of healing all defects in the case. Of course The Times is not pleading for one moment for the condoning of any fraud on the part of any person in so far as that person can be reached and punished for his wrongdoing. We are only pleading the cause of the innocent holders whose good faith shall be shown to be beyond all question. We understand that this is the condition in nearly all the cases in the Imperial Valley. If those who were guilty of fraud can be reached and punished, by all means let that thing be done relentlessly. If there is an instance in the Imperial Valley wherein the present owner is in possession of land which he obtained by collusion with the original fraudulent settler, or if the present owner is guilty of any fraud or concealment on his part, let him suffer. But for the settler who took up the land upon the records in the local land office in good faith and from these records thought he was acquiring what might be perfected into a secure title, who has complied with all the provisions of the law, spent several years, much labor and money in bringing his holding to a profitable condition—in such cases as this the Government surely will not visit the sins of the fraudulent beginners upon the present innocent holders, but will heal any technical defects in the procedure and hand in some way to the bona fide developers a clear title to their properties. As it is held that a special act of Congress is necessary to do this, it is our opinion that such action should be taken promptly."

Senator FLINT. I also present an editorial from the Imperial Valley Press of January 1, 1910, relating to this matter.

(The editorial referred to is as follows:)

"PROTECTION FOR THE SETTLER.

"The proposed amendment to the desert-land act for the protection of the actual reclaimer of and bona fide settler on desert land, recently indorsed by the Imperial County Chamber of Commerce, is designed to make the land law conformable to common sense and common justice, and if enacted it will put an end to much of the harassment to which settlers are subjected by the quibbling land lawyer and the blackmailing contestor. If the records of the land office can not be relied upon by the settler as legal and conclusive evidence of the status of an entry or claim, they are worthless for any purpose, and the whole system of disposing of public lands is a bunco game played by the Government on the people.

"The present practices of the land office and interpretations of the law by the courts are inconsistent, irreconcilable, and absurd, and the operation of the muddled law is oppressive and disastrous to the man who accepts in good faith the Government's invitation to spend his time, money, and energies in reclaiming the desert and making worthless land productive and valuable. The Land Office says in effect to the citizen: 'Here is an entry that we have accepted and for which we have taken money. Our records show that a possessory right has been acquired. You may buy an assignment of that right, complete the reclamation of the land, and pay us for it, and when you shall have created a valuable farm and fulfilled your part of the contract in every particular, you may have to go to court and spend a great deal of money to find out whether or not you ever acquired any right or have any title

RELIEF OF ASSIGNEES IN GOOD FAITH OF DESERT LANDS. 15

to the improvements you have made at great expense. Your fine farm is a standing reward offered by the Government to any scoundrel who desires to rob you and can find another rogue willing, for a part of the loot, to swear that he is a perjurer, and all this elaborate machinery of the Land Office, for which you and the rest of the people pay, is no protection to you."

"One of the purposes of the proposed amendment is to validate the records of the Land Office and make them what they purport to be and should be. The matter has been brought to the attention of the governor of California, who is greatly interested in Imperial Valley, and he is in favor of the proposed legislation for the protection of the settlers of this region, as the following letter shows:

DECEMBER 22, 1909.

ALLEN KELLY, *El Centro, Cal.*

MY DEAR MR. KELLY: Your letter of December 17 has been duly received. I think that some kind of legislation of the kind referred to in your letter should be passed. Of course the United States Government has got to protect itself against fraudulent entries, particularly against the entry of one person for the benefit of another. But where it appears that the person in possession of the land makes a home of it, has no knowledge of the fraud committed, and has acted in good faith, something ought to be done to protect him in his rights and secure to him the land upon which he is living and has been improving.

The law is that a person purchasing from one who only holds a receiver's duplicate receipt is not an innocent purchaser, because the title still remains in the Government, and the original entryman only has an equitable right, but I think the bill could be so drawn that a person, though he purchased from such an entryman, might be protected if he had no connection whatever with the original entry and no knowledge that the original entryman was acting in bad faith, and went upon the land and cultivated it and made it his home and improved it.

The purpose of the law is to encourage people to go upon the public domain and make homes there, and when a person is doing this in good faith he is certainly doing everything that the spirit of the law requires and fully complying with the purposes of the law. I would be glad to give any such bill any support that I possibly can and would be more than pleased to see it enacted into law.

With kindest regards, I am,

J. N. GILLET.

"The bill, which has been sent to Senator Flint with a request that he introduce it and endeavor to procure its passage, covers the points made by the governor and conforms in every particular to the requirements set forth in his letter. It provides simply 'That the records of the Land Office shall be conclusive evidence of the validity of a desert-land entry when the claim passes by assignment to a qualified entryman, and no defect of original entry shall impair the right to final certificate and patent of an innocent purchaser (without notice) of such assignment, provided such assignee shall have complied in good faith with the requirements of the desert-land act.'"

The hearing was then closed.

STATIONS ON CERTAIN OCEAN STEAMERS.

List of wireless telegraphic shore stations on the coasts of the United States, Porto Rico, Panama, Hawaii, Guam, and the Philippines, with systems and owners—Continued.

Station.	System.	Owner.
Pacific coast:		
San Diego, Cal.	United	United Wireless.
Point Loma, Cal.	Composite	Do.
Los Angeles	Pacific	Pacific Wireless.
Pasadena	United	United Wireless.
Avalon, Catalina Island	United	Do.
Santa Barbara	do	Do.
Monterey	Pacific	Pacific Wireless.
Farallon Islands, Cal.	United	United Wireless.
Mare Island, Cal.	Composite	Do.
Point Arguella Surf, Cal.	do	United States Navy.
Yerba Buena Island, Cal.	Shoemaker	Do.
San Francisco	Composite	United Wireless.
Galilee, N. J.	United	United Wireless.
Atlantic City, N. J.	do	Do.
Philadelphia	do	Do.
Cape Henlopen, Del.	Stone	United States Navy.
Annapolis, Md.	Composite	Do.
Washington, D. C.	do	Do.
Tangier Island, Va.	United	United Wireless.
Norfolk, Va.	United	Do.
Elizabeth City, N. C.	United	Do.
Cape Hatteras, N. C.	Composite	United States Navy.
Diamond Shoals Light-House	United	Do.
Beaufort, N. C.	Fessenden	United States Navy.
Charleston, S. C.	Marsle	Do.
Savannah, Ga.	do	Do.
St. Augustine, Fla.	United	United Wireless.
Jupiter Inlet, Fla.	United	Do.
Key West	Shoemaker	United States Navy.
Guantanamo, Cuba	United	United Wireless.
San Juan, P. R.	Composite	United States Navy.
Culebra, P. R.	De Forest	Do.
Pensacola, Fla.	Shoemaker	Do.
	De Forest	Do.
	Composite	Do.

SUPPLEMENTAL STATEMENT OF WILLIAM F. RINGERT IN SUPPORT OF
S. 482, A BILL "TO PROVIDE RELIEF FOR CERTAIN DESERT
LAND ENTRYMEN IN THE STATE OF IDAHO."

The purpose of this supplemental statement is to respond to and to clarify certain portions of the statement of Mr. Lynn Engdahl, Special Assistant to the Director, Bureau of Land Management, before the Subcommittee on Public Lands and Reserved Water on June 27, 1983.

The BLM's mechanical approach to S. 482, which draws upon equally mechanical approaches employed by the Interior Board of Land Appeals and by the United States Court of Appeals for the Ninth Circuit in developing their interpretations of the Desert Land Act, misses the basic question presented by S. 482. The question is not whether the IBLA and the courts correctly interpreted the holding limitation, but rather whether it is fair and necessary to enforce forfeitures against these entrymen based upon an interpretation that had not been developed, much less been made public, at the time the entrymen entered into the transactions that the BLM now criticizes and holds to be illegal.

The BLM's statement advises the Subcommittee that the "arrangements were found to have violated the provision of the Desert Land Act that allows a person to enter no more than 320 acres of desert land to reclaim it." In this respect the BLM apparently is confused about what the Act provides and what the

IBLA held. It is true that the Act provides that no person may enter more than 320 acres, but that provision is in 43 U.S.C. § 321, which has never been an issue in these cases. What the IBLA held was that the arrangements permitted other parties to hold more than 320 acres of desert land. There has never been a contention in either case that any person entered more than 320 acres of desert land.

The arrangements in the Sailor Creek case were basically as outlined by the BLM on page 3 of Mr. Engdahl's statement. What the statement does not reveal is that the BLM required the entrymen to have the water right contracts with Sailor Creek Water Company before the BLM would approve Sailor Creek as the entrymen's source of water for reclamation of their entries. Those water right contracts, and the mortgages which secured payment of the construction costs, were submitted to, and analyzed and approved by, the BLM before it allowed the applications for the entries.

The subject of leasing the Sailor Creek entries was discussed with local BLM officials before the leases were made. Mr. G. Patrick Morris' statement to the Subcommittee shows that the BLM expected the entrymen to lease the land in order to insure a successful farming operation. No objection was made by the BLM to the terms proposed by the leases. The BLM implies in its statement that the leases permitted the tenant to receive abnormal benefits from the arrangements, but the Administrative Law Judge expressly

found that the leases were ordinary farm leases which conferred no extraordinary benefits on the tenant. That finding was not disturbed by the IBLA. Uncontradicted testimony in the case shows that the rent paid to the entrymen was comparable to that received by owners of private land in the same general area.

The question of whether the BLM knew what the arrangements were for development and farming of the Sailor Creek entries was never an issue until the BLM appealed to the Board from the Administrative Law Judge's decision in favor of the entrymen. As noted in my previous statement, the finding that the BLM was not aware of the "totality of the arrangement between the entrymen and Sailor Creek" until it requested copies of the contracts, was based entirely upon the Land Office Manager's letter to the entrymen after final proof had been submitted.

The Administrative Law Judge had held that the BLM knew of the arrangements and had encouraged the entrymen to lease the entries. That finding was adopted by the District Court. Both the IBLA and the Court of Appeals simply ignored those findings, and the testimony and the other evidence upon which they were based, without any explanation, to arrive at the conclusion that the BLM did not know about the arrangements. The BLM is hiding its head in the sand on this point. Its own field examiner, in the report he made before final proof was offered in early June of 1964, noted that the entries were being farmed under contract with Sailor

Creek Water Company. The plain truth of the matter is that the BLM did know what the arrangements were, and the only plausible reason for the IBLA's contrary finding was a desire to eliminate the knowledge element of estoppel so the new interpretation could be applied retroactively to these entries.

Any doubt that the government had knowledge of the arrangements for the farming operations should be removed by the letter of May 15, 1964, from the Regional Director of the Bureau of Reclamation to the Commissioner, in which he noted that the actual farming "is on a large scale and in some cases is done by contract or a long-term lease." He also noted that "it is understood that many of the desert land entrymen will not establish residence on the lands to be farmed and may not be engaged in the farming activity personally. The letter mentions a pamphlet concerning the Sailor Creek project, noting that "this pamphlet, prepared by the Idaho Power Company, gives a concise description of the development."

Any implication that there was any effort in either project to conceal arrangements for the farming operations from the BLM should be belied by the fact that Sailor Creek, on April 20, 1964, and Black Mesa, on July 9, 1965, held public dedication ceremonies and invited open inspection of the project facilities and the farming operations. A copy of the report by the Idaho Daily Statesman, the area's largest newspaper, on the Black Mesa

dedication ceremony is attached to this statement.

Among the inaccuracies in the BLM's statement regarding the arrangements for Black Mesa (page 4), is the assertion that the partnership was responsible for determining the amount of compensation the entrymen would receive. A proposal was made to the entrymen on January 29, 1965, for a price of \$32.50 or \$34.50 per acre per year as part of the original ten-year operating agreements. That proposal was thoroughly discussed, along with the construction contract and other aspects of the development and farming proposals, at a meeting that lasted more than six hours. The testimony on that point is uncontradicted. The entrymen made their own determination that the proposed compensation was fair. The BLM never offered any evidence that the amount was not adequate compensation for a landowner.

After the Black Mesa entrymen learned of the Solicitor's April 5, 1965 Memorandum opposing the 1964 Indian Hill decision, they cancelled the ten-year operating agreements and proceeded with a one-year operating agreement under which the entrymen received a 20% share of the gross crop income. The testimony was uncontradicted that where the farm operator pays all the operating expense and pays for the irrigation water, a 20% share to the landowner was common practice in that general area.

In 1972 the BLM issued patents on two entries that had been contested because they were developed and farmed under a lease

that permitted the developer to retain 100% of the crop proceeds for the five-year period of the lease. The Administrative Law Judge in that case (Hepworth and Yarbrough, Idaho 07289 and 07212) ruled that the lease did not constitute a violation of the holding limitation. Neither the IBLA nor the Court of Appeals made any effort to distinguish that case from the the Sailor Creek and Black Mesa cases.

We suggest that the present officials of the BLM would not be so quick to criticize and condemn these entrymen, if they were themselves fully apprised of the true facts. They now state (page 6) that if the Government had been fully apprised of the true intent of the entrymen, the farms would not have been allowed to proceed to full development. That statement simply cannot be reconciled with the fact that within less than a month after it received copies of the Sailor Creek leases, and nearly a year after it approved the water right contracts and mortgages, the BLM National Director issued his 1964 Indian Hill decision approving the development arrangements in that project. And the statement cannot be reconciled with the fact that after having been advised late in 1964 that the Black Mesa entrymen wanted to arrange for the partnership to farm the entries and after having been furnished copies of the construction and development contracts and the operating agreements in mid-March of 1965, when farm operations were just beginning, the BLM did absolutely nothing to

indicate that the proposed arrangements were improper.

The IBLA's discussion of settlement in connection with the Desert Land Act was part of its effort to change desert entry policy by administrative decision. There is no statutory requirement for settlement on desert land entries. The congressional debate on the 1890 and 1891 amendments gave no indication that Congress intended to impose a settlement requirement. A decision (Bond's Heirs v. Deming Townsite, 13 L.D. 665) in 1891 clearly stated that settlement is not required and that all the work can be done by agents of the entryman. And, for many years (at least as late as 1970) the regulations of the Department recognized that actual settlement and residence upon the land were not necessary (43 C.F.R. 2226.0-7(d)(2)) (1970 Revision).

The Department recognized from an early date that administrative adjudication was the only method by which it could hope to apply its new interpretation of the Act, and its new policy regarding development of desert land entries, to the entries in these projects. The responsible officials obviously had to recognize that, because there were no regulations defining the holding limitation or defining and applying the possession-benefit-control theory of the holding limitation, the Administrative Procedure Act would not permit them to assert retroactively that the entrymen were in violation of any

regulations that the Department might have seen fit to adopt in 1966 or 1967 as a means of implementing the Secretary's 1966 decision in the Indian Hill case. The issue of failure to comply with the Administrative Procedure Act was raised in both cases, but was disregarded without explanation by the IBLA and the courts. Another issue raised and disregarded was the failure of the Department to administer its interpretation of the Desert Land Act through the issuance of regulations, as required by 43 U.S.C. § 1201, which is the basis for the Department's authority to administer the Desert Land Act. If the Department had issued regulations as required by law, its interpretation of the Desert Land Act would have been known, the entrymen and developers could have avoided agreements in conflict with the present interpretation, and the problems in these cases never would have arisen.

The BLM contends that these entrymen were "dummies" in the sense that Sailor Creek Water Company and Grigg and Anderson held the land "in the names of dummy entrymen without ever receiving title but at the same time using the land for its own benefit and preventing bona fide settlers from making entry." (Page 7). The federal courts in Idaho and Washington have established the meaning of a "dummy", and that term does not include these entrymen. In the Warn case, 295 F. 328, 331, the Idaho court stated that "'Sham' is possibly the closest equivalent. It implies

a make-believe, a pretended, a feigned something -- ". That court certainly would not have regarded a situation where the entryman was receiving cash rent or a crop share equal to that received by private landowners, commensurate with their risk- sharing in the crop production expenses, as a "dummy" situation. The Washington Federal Court, in the Munday case, 186 F. 375, 385, after noting that in Land Office practice dummies are either fictitious persons or those who have no interest in the transaction and permit the use of their names for the perpetration of a fraud, stated that an entryman who has initiated his claim and is entitled to deal with it as his own property, "to sell it, lease it, mortgage it, or keep it, and derive for himself all of the profits and benefits to be derived from the most advantageous use or disposition of such property, is not a dummy entryman." In the seventeen years since the contests were filed in the Sailor Creek case, the BLM has not cited a single authority for the proposition that the entrymen in these cases would have been considered by Congress in 1891 to be dummies.

The BLM is confused when it refers (page 7) to "the innocent assignees of the Indian Hill case, who were by the Act of June 25, 1910 allowed to complete their entries." The 1910 Act applied only to entries in Imperial County, California, while the Indian Hills case involved entries in Idaho which were forfeited as the result of the Secretary's 1966 decision and the Ninth Circuit's 1973

decision. Without the 1910 Act, the Imperial County assignees, through a harsh and strict interpretation of the Desert Land Act, would have forfeited their entries even though they did not know that the original entrymen were dummies, who agreed in advance to transfer title to the entries as soon as they were made. The parallel with these cases is that, although the Sailor Creek and Black Mesa entrymen knew what agreements they were making, they did not know that the Department would interpret a combination of development contracts, mortgages, and leases or farm operating agreements as constituting a holding under 43 U.S.C. § 329, or that a new interpretation of § 329 would be applied retroactively to their entries. In that respect, these entrymen were innocent, just as were the Imperial County assignees.

The BLM also is confused when it asserts that the IBLA found that the Sailor Creek transactions constituted an assignment for the benefit of a corporation or association. The Administrative Law Judge expressly found that the transactions did not constitute assignments and the IBLA did not disturb that ruling, stating "It is unnecessary for us to decide whether these actions nevertheless effectively constitute an assignment." 82 I.D. 146, 156.

The BLM suggests that enactment of S. 482 would legitimize violations of the Desert Land Act. Given the BLM's own precedents, it is questionable that the transactions constituted violations of the Act. In the Gunderson case, the Department held that "the

meaning of the term 'entry' was not so clear as to warrant holding an applicant accountable for understanding that the mere act of filing an allowable homestead entry application would exhaust his rights under the homestead law." 71 I.D. at 484. And in the Thompson case the Department held that "if the contract (desert land entry) when made, was valid by the law as then interpreted and administered, its validity and obligation can not be impaired by any subsequent decisions altering the construction of the law." 8 L.D. at 109.

But even if the transactions constituted technical violations of the Act, as contended by the BLM, relief in the form of reinstatement of the entries under §. 482 would no more sanction those violations than would the many administrative and court decisions that have declined to apply retroactively new interpretations of a statute. A few months after the IBLA decided these cases it held in the Bingham case, 82 I.D. 377, 380, that an entry held by an innocent assignee would not be cancelled because of the original entrywoman's disqualification in not being a resident of the state, which is very clearly required by 43 U.S.C. § 325, except in the State of Nevada. In the Bingham case the IBLA also held that "regulations should be so clear that there is no basis for an applicant's noncompliance with them before they are interpreted so as to deprive him of a statutory right. * * * If there is doubt as to the meaning and intent of a regulations, such

doubt should be resolved favorably to the applicant. * * * Had it been the intention of the Secretary to impose a mandatory requirement that irrigation systems, or specific components thereof, be permanently installed on the entry, he could easily have done so by promulgating an explicit regulation to that effect. This has not been done." 82 I.D. at 384.

Judges Stuebing and Ritvo of the panel in the Bingham case wrote the IBLA's opinions in the Sailor Creek and Black Mesa cases. There is no plausible explanation for their failure to apply the Bingham standards to this case.

And, it should be noted that the 1910 Act had the same effect as the the BLM asserts S. 482 will have, in that it "sanctioned" what were recognized to be violations of the law by the original entrymen. It is noteworthy that the Department of the Interior was actively supporting passage of the 1910 Act, even though it might have involved the technical sanctioning of previous violations of the law.

As a final point, we request that S. 482 be amended by inserting in § 3 of the Act, immediately following the word "reinstated", the following words:

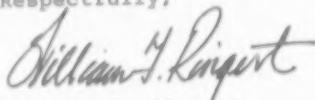
", effective as of the respective dates on which the applications for the entries originally were allowed,"

This amendment is required to clarify the intent of the bill,

because the local BLM representatives are asserting that the entrymen have been trespassing on the entries since they first were allowed, and are demanding payment of trespass charges in the amount of \$1,162,000.00 on the Black Mesa entries, and have verbally indicated that a similar trespass claim will be made against the Sailor Creek entrymen, at the rate of \$30.00 per acre per year. The local representatives have stated that they interpret S. 482, as now written, as not recognizing any right of possession for the entrymen from the time of original allowance of the entries.

We thank the Subcommittee once again for the opportunity to submit this material in support of S. 482, and again urge the Subcommittee to take favorable action on the bill.

Respectfully,

A handwritten signature in cursive script, reading "William F. Ringert".

William F. Ringert

New Pump Irrigates By 2-Stage Process

GLENN FERRY — An electric-pump irrigation development which is lifting water in two stages from the Snake River near here to sprinkle a potato crop ranked among the nation's biggest will be dedicated today. The dedication ceremonies and public tours are expected to attract

hundreds of reclamation enthusiasts from throughout the area to the Cottonwood Mutual Canal Company's unique development, located atop Black Mesa southeast of Glenn Ferry.

Begin at 3

Company president William A. Anderson said the dedication is scheduled to begin at 3:30 p.m., followed by tours of the development that is irrigating more than 5,000 acres with electric pumps totaling 9,500 horsepower.

Anderson said the ceremonies will be held at the development's headquarters, which includes an electrically heated shop and bunkhouse.

Speakers will include Nephi Grigg, Burley, board chairman of Ore-Ida Foods, Inc.; D. S. Bailey, Boise, Idaho Power Company vice-president for division operations; Dorrell Larsen, Boise, irrigation specialist for the University of Idaho extension service; and Herbert Edwards, Mountain Home, Elmore County agent.

Operation of the all-electric development, described as a "pioneer in engineering concept," will be explained by G. T. Newcomb of Twin Falls, whose firm designed it.

The development visitors will be welcomed by Mayor Herman Johnson of Glenn Ferry. Gordon W. Hansen, Idaho Power's Mountain Home-Glenn Ferry district manager, will be master of ceremonies.

Resources Pooled

The opening will be co-sponsored by Idaho Power and Cottonwood Mutual, which is composed of individual entrymen who Anderson said have "pooled their resources in the best private-enterprise tradition" to bring this pioneer development to fruition.

Idaho Power invested nearly \$250,000 in new facilities to serve the development, including seven miles of distribution line and a substation that taps an existing 135,000-volt first transmission line, Anderson said.

Anderson said one of the new development's most unusual features is the two-stage lift that boosts water some 550 feet from the Snake to the mesa-top farmland with pumps totaling 9,500 horsepower.

18 Pumps Used

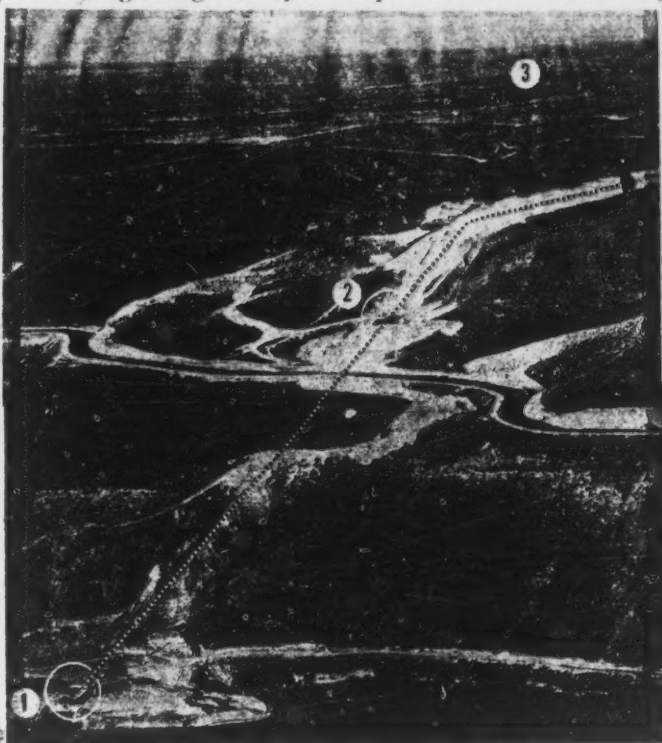
Eight 600-horsepower electric pumps perform the first stage, pushing the water through a 42-inch steel penstock to a roller plant near the rim of the mesa.

IDAHO DAILY STATESMAN

BOISE, IDAHO, FRIDAY MORNING, JULY 9, 1965

Page Seven/om

2-Stage Irrigation System Opens on Black Mesa



ONE OF southern Idaho's electric-pump irrigation projects will officially start its first season today with dedication ceremonies and public tours. It is the Cottonwood Mutual Canal Co.'s development on the Snake River near Glenn Ferry, where a two-stage lift will boost water to one of the biggest potato fields in a single project. Aerial photo of development shows how water is drawn from Snake by river pumping plant (1) and pushed to roller plant (2) where additional pumps boost it out of trap up steep bluff to farmland (3). All-electric development, whose river and roller plant pumps total 9,500 horsepower, also includes such pioneering features as semi-permanent system on which sprinkler laterals remain in place throughout season.

Senator WALLOP. Thank you very much, Mr. Ringert.

Mr. Axelson, if you would forego. Senator DeConcini has come in and I would like to hear his testimony now.

STATEMENT OF HON. DENNIS DeCONCINI, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator DeCONCINI. Mr. Chairman, thank you very much. I would like to express my great appreciation to you and the staff of this committee for permitting us to testify here today, but also, Mr. Chairman, being a westerner, I am sure you appreciate the great influence that the agencies that this committee has jurisdiction over play in the West.

This committee has been generous in its time and consideration of problems facing Arizona as well as many other Western States. We are most grateful to this. It is very helpful to be able to work with your staff and I commend them.

I would like to thank you and the other members of the Energy and Natural Resources Committee for holding this hearing today on two bills which are very important to communities in my State, bills that convey approximately 1 acre of Forest Service land to the town of Payson and to establish a special fund to support the Grand Canyon Unified School District.

Mr. Chairman, I first will discuss the Payson legislation and then turn to the Grand Canyon. The town of Payson is located northeast of Phoenix and is surrounded by the Tonto National Forest.

Presently 30,840 acres of land within the town are owned and managed by the U.S. Forest Service. This represents approximately 47 percent of all land within the community.

As a consequence, the national forest has had a major impact on the lives of the residents and the lifestyle of Payson. For the most part, the effects have been highly beneficial.

However, there is very little private land available for community purposes. The town and the Northern Gila County Historical Society in particular are interested in securing a parcel of Forest Service land located in close proximity to the downtown area on which to construct a museum.

Many items from the pioneer days of the community including antiques and artifacts from Indians and Forest Service would be put in this museum. The parcel of forest land which has been identified in this legislation appears to be the most appropriate for the museum.

It is the site of the first Forest Service ranger station in Payson which was abandoned many years ago. The ranger station and the original ranger dwelling units still stand on the site.

This particular site is desirable for many reasons. It is located close to the center of this rather small community. It is not being used by the Forest Service, nor does the Forest Service have plans for its use.

It has historical significance by the fact that the accompanying properties were built around 1908. It could be preserved as a historical area and the dwelling unit could be filled with Forest Service items, calling attention to the role the Government has played in our development of national forests.

Mr. Chairman, as you can well imagine, the Forest Service building which occupies the sites are in a state of disrepair. It would take a considerable amount of money which will be put up by the Northern Gila County Historical Society to reconstruct and make it a safe building.

As we are talking about a small parcel of forest land, approximately an acre, to complete this project because it would serve as a tribute to both the Forest Service and the community, it is hoped that the Forest Service will convey this limited amount of land to the town for historical purposes.

Mr. Chairman, the committee, if you favorably consider this bill, will help to complete a very worthy project. In addition, there are many people who have lived and worked around this project for a long time and I hope the chairman understands what I am referring to as to their investment of time and emotions in this area.

Now, Mr. Chairman, let me turn to S. 600. I understand you had some testimony previously given and certainly I applaud the efforts of diverting some jobs bill money to the construction and improvement of the Grand Canyon School District legislation.

I would like to expound a little bit. The Grand Canyon Unified School District is facing severe financial difficulties. It is a school which provides education for approximately 220 students from kindergarten through the 12th grade.

It is located within the Grand Canyon National Park. For the most part, it serves the children of Federal employees who reside and work in the park. All but a small portion of land within the school district boundaries is federally owned.

As a result, taxation which could support the school district is minimal. The school district does not receive impact aid assistance. However, with the passage of the Senate Education Equalization Act—excuse me, it does receive impact aid assistance.

However, with the passage of the State Education Equalization Act and Federal cutbacks in the impact aid program, these sources of funds have been drastically cut.

Further, the school district does not receive payments in lieu of tax assistance. For the school year 1982-83, the district received \$206,818 in impact aid, and \$32,651 in other Federal education assistance.

Thus, even though over 80 percent of the district's students are dependents of Federal employees who live on Federal land, only about 30 percent of the district's total budget was financed through Federal funds.

The reason I have given you this background on the school district is to outline the need for this legislation. The purpose of S. 600 is to provide some financial relief to the Grand Canyon School District.

All possible remedies have been pursued and if the school is to survive, this legislation is necessary. This bill modified Public Law 95-224 by establishing a special fund for the school district derived from revenues received by the United States from visitors to the Grand Canyon National Park; in other words, gate receipts.

By such terms as prescribed by the Secretary of the Interior, payments would be made to the school district for education, oper-

ation, and maintenance. No institution can operate in a funding vacuum.

A stable funding source is a critical component of sound management practices. Asking the Congress for a line item appropriation year after year does not guarantee support on a continuing basis.

When the Congress considered this matter previously it assumed that requests for appropriation would be forthcoming. Unfortunately, school years have come and gone and we have yet to secure any funds for Public Law 95-224 as amended by Public Law 96-581.

You will recall, Mr. Chairman, these public laws establish a special account under the Department of the Interior for the operation and maintenance of the Grand Canyon School.

Again, we are talking about the education of children of Federal employees. I believe it is quite clear that the Federal Government is not providing its fair share or even close to its fair share of assistance to this school district.

The present condition of the school, and I have visited there a number of times and will next week, Mr. Chairman, and its facilities are in a distressing state.

Serious fire and other life-threatening hazards must be corrected. In a letter I received recently from the school district I was told that in order to eliminate the most urgent life-threatening hazards, the school board committed all its capital levy funds to the repair of school facilities—approximately \$160,000 for 1984-85 and \$40,000 to \$45,000 for 1984-85.

In order to make these funds available, which by the way do not come close to the estimated \$2 million of critical renovation and repair facilities, the school has had to eliminate programs and reduce its teaching staff.

Obviously this cannot continue. We have here today a representative from the school district, Mr. David Curd, who has dedicated many hours of his time trying to find some resolution.

I am sure that he will provide you additional information. Mr. Chairman, I think the problem of precedents is always one that is raised by this committee and properly so. I would like to think that this is a special case.

To millions of people who visit the national park, it is disturbing to see a dilapidated school system, one that does not provide equal education for students that happen to be children of Federal employees.

I will simply conclude my statement by repeating that the school system is facing a desperate situation and this legislation provides a simple, sensible solution. On behalf of the school board and the parents of these 220 children, I urge the committee to favorably report this measure.

As you know, the summer Olympics will be held in Los Angeles in 1984 and as a result it is anticipated and estimated that gate receipts from visitors to the Grand Canyon will increase by about 15 percent in both 1983—excuse me, in 1983 and about 20 percent in 1984.

It is my view that the sum to be derived from these increased receipts would rightfully go to the Grand Canyon School District and what a great tribute for the Olympics to help pay for the proper education of young children.

Thank you, Mr. Chairman.

Senator WALLOP. Dennis, thank you very much. I have here as well on these two bills a letter from your colleague the senior Senator, Senator Goldwater, which I would put in the record at the same time.

Senator DECONCINI. Thank you, Mr. Chairman.

[The prepared statement of Senator DeConcini and a letter from Senator Goldwater follow:]

STATEMENT BY SENATOR DENNIS DeCONCINI
BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS
ON S. 598, A BILL TO CONVEY FOREST SERVICE
LAND TO THE TOWN OF PAYSON, AND
S. 600, THE GRAND CANYON SCHOOL DISTRICT LEGISLATION
JUNE 27, 1983

MR. CHAIRMAN, I THANK YOU AND OTHER MEMBERS OF THE ENERGY AND NATURAL RESOURCES COMMITTEE FOR HOLDING THIS HEARING TODAY ON TWO BILLS WHICH ARE VERY IMPORTANT TO TWO COMMUNITIES IN MY STATE -- A BILL TO CONVEY APPROXIMATELY ONE ACRE OF FOREST SERVICE LAND TO THE TOWN OF PAYSON AND A BILL TO ESTABLISH A SPECIAL FUND TO SUPPORT THE GRAND CANYON UNIFIED SCHOOL DISTRICT.

MR. CHAIRMAN, I WILL FIRST DISCUSS THE PAYSON LEGISLATION AND THEN TURN TO THE GRAND CANYON BILL.

THE TOWN OF PAYSON IS LOCATED NORTHEAST OF PHOENIX AND IS SURROUNDED BY THE TONTO NATIONAL FOREST. PRESENTLY 3,840 ACRES OF LAND WITHIN THE TOWN ARE OWNED AND MANAGED BY THE U.S. FOREST SERVICE. THIS REPRESENTS APPROXIMATELY 47 PERCENT OF ALL LAND WITHIN THE COMMUNITY. AS A CONSEQUENCE, THE NATIONAL FOREST HAS HAD A MAJOR IMPACT ON THE LIFE OF THE RESIDENTS AND THE LIFESTYLE IN PAYSON. FOR THE MOST PART, THE EFFECT HAS BEEN HIGHLY BENEFICIAL; HOWEVER, THERE IS VERY LITTLE PRIVATE LAND AVAILABLE FOR COMMUNITY PURPOSES.

THE TOWN AND THE NORTHERN GILA COUNTY HISTORICAL SOCIETY IN PARTICULAR, ARE INTERESTED IN SECURING A PARCEL OF FOREST SERVICE LAND, LOCATED IN CLOSE PROXIMITY TO THE DOWNTOWN AREA, ON WHICH TO

- 2 -

CONSTRUCT A MUSEUM. MANY ITEMS FROM THE PIONEER DAYS OF THE COMMUNITY, INCLUDING ANTIQUE FARM MACHINERY, INDIAN ARTIFACTS, FOREST SERVICE MEMORABILIA, AND OTHER ARTICLES OF HISTORICAL SIGNIFICANCE ARE AVAILABLE FOR DISPLAY IF A SUITABLE LOCATION FOR A STRUCTURE CAN BE OBTAINED. THE PARCEL OF FOREST SERVICE LAND WHICH HAS BEEN IDENTIFIED IN THIS LEGISLATION APPEARS TO BE THE MOST APPROPRIATE FOR A MUSEUM. IT IS THE SITE OF THE FIRST FOREST SERVICE RANGER STATION IN PAYSON, WHICH WAS ABANDONED MANY YEARS AGO; BUT THE RANGER STATION AND THE ORIGINAL RANGER DWELLING UNIT STILL STAND ON THE SITE.

THIS PARTICULAR SITE IS DESIREABLE FOR MANY REASONS. IT IS LOCATED CLOSE TO THE CENTER OF THIS RATHER SMALL COMMUNITY; IT IS NOT BEING USED BY THE FOREST SERVICE NOR DOES THE FOREST SERVICE HAVE PLANS FOR ITS FUTURE USE; IT HAS HISTORICAL SIGNIFICANCE BY THE FACT THAT THE ACCOMPANYING PROPERTIES WERE BUILT AROUND 1908; AND IT COULD BE PRESERVED AS AN HISTORIC AREA AND THE DWELLING UNIT COULD BE FILLED WITH FOREST SERVICE ITEMS CALLING ATTENTION TO THE ROLE THIS GOVERNMENT AGENCY HAS PLAYED IN THE HISTORY OF THIS FINE COMMUNITY.

MR. CHAIRMAN, AS YOU CAN WELL IMAGINE, THE FOREST SERVICE BUILDINGS WHICH OCCUPY THE SITE ARE IN A STATE OF DISREPAIR. IN ADDITION, THEY ARE NOT FIRE-PROOF STRUCTURES. WHILE THERE IS A GREAT DEAL OF INTEREST IN THEIR RESTORATION, THEY COULD NOT BE USED TO STORE VALUABLE ARTIFACTS WITHOUT MEASURES BEING TAKEN TO PROTECT AGAINST FIRE AND OTHER HAZARDS. IF THE PROPERTY IS CONVEYED TO THE TOWN, THE NORTHERN GILA COUNTY HISTORICAL SOCIETY PLANS TO CONSTRUCT A FIRE-PROOF BUILDING TO SERVE AS THE TOWN MUSEUM. THE COSTS ASSOCIATED WITH SUCH AN ENDEAVOR ARE RELATIVELY HIGH WHEN COMPARED

TO THE MEAGER BUDGETS OF THE HISTORICAL SOCIETY AND THE TOWN.

MR. CHAIRMAN, WE ARE TALKING ABOUT A SMALL PARCEL OF FOREST SERVICE LAND, APPROXIMATELY ONE ACRE, TO COMPLETE THIS PROJECT. BECAUSE IT WOULD SERVE AS A TRIBUTE TO BOTH THE FOREST SERVICE AND THE COMMUNITY, IT IS HOPED THAT THE FOREST SERVICE WILL CONVEY THIS LIMITED AMOUNT OF LAND TO THE TOWN FOR HISTORICAL PURPOSES.

MR. CHAIRMAN, THE COMMITTEE'S FAVORABLE CONSIDERATION OF THIS BILL WILL HELP TO COMPLETE A VERY WORTHY PROJECT. IN ADDITION, IT WILL MAKE A LOT OF PEOPLE IN THIS LOVELY FOREST COMMUNITY VERY HAPPY. MANY WHO HAVE BEEN INVOLVED IN THIS PLAN ARE GETTING ON IN AGE AND TIMELY ACTION IS ESSENTIAL IF THEY ARE TO EVER SEE THE ACTUAL RESULTS OF THEIR EFFORTS.

MR. CHAIRMAN, LET ME NOW TURN TO S. 600, THE GRAND CANYON SCHOOL DISTRICT LEGISLATION.

MR. CHAIRMAN, THE GRAND CANYON UNIFIED SCHOOL DISTRICT IS FACING SERIOUS FINANCIAL DIFFICULTIES. THE SCHOOL, WHICH PROVIDES EDUCATION FOR APPROXIMATELY 220 STUDENTS GRADES K THROUGH 12, IS LOCATED WITHIN THE GRAND CANYON NATIONAL PARK AND, FOR THE MOST PART, SERVES THE CHILDREN OF FEDERAL EMPLOYEES WHO RESIDE ON FEDERAL LAND. ALL BUT A SMALL PORTION OF THE LAND WITHIN THE SCHOOL DISTRICT BOUNDARY IS FEDERALLY OWNED. AS A RESULT, TAXATION WHICH COULD SUPPORT THE SCHOOL DISTRICT IS MINIMAL. THE SCHOOL DISTRICT DOES RECEIVE IMPACT AID ASSISTANCE; HOWEVER, WITH THE PASSAGE OF THE STATE EDUCATIONAL EQUALIZATION ACT AND FEDERAL CUTBACKS IN THE IMPACT AID PROGRAM, THIS SOURCE OF FUNDS HAS BEEN DECREASING AS COSTS AT THE SCHOOL HAVE CONTINUED

- 4 -

TO RISE. FURTHER, THE SCHOOL DISTRICT DOES NOT RECEIVE PAYMENTS-IN-LIEU OF TAX ASSISTANCE. FOR THE SCHOOL YEAR 1982-83, THE DISTRICT RECEIVED \$260,817 IN IMPACT AID AND \$32,651 IN OTHER FEDERAL EDUCATIONAL ASSISTANCE. THUS, EVEN THOUGH OVER 80 PERCENT OF THE DISTRICT'S STUDENTS ARE DEPENDENTS OF FEDERAL EMPLOYEES WHO LIVE ON FEDERAL LAND, ONLY ABOUT 36 PERCENT OF THE DISTRICT'S TOTAL BUDGET WAS FINANCED THROUGH FEDERAL FUNDS.

MR. CHAIRMAN, THE REASON I HAVE GIVEN YOU THIS BACKGROUND ON THE SCHOOL DISTRICT IS TO OUTLINE THE NEED FOR THIS LEGISLATION. MR. CHAIRMAN, THE PURPOSE OF S. 600 IS TO PROVIDE SOME FINANCIAL RELIEF TO THE GRAND CANYON SCHOOL DISTRICT. ALL POSSIBLE REMEDIES HAVE BEEN PURSUED AND IF THE SCHOOL IS TO SURVIVE, THIS LEGISLATION IS ITS ONLY HOPE.

MR. CHAIRMAN, THIS BILL MODIFIES PUBLIC LAW 95-224 BY ESTABLISHING A "SPECIAL FUND" FOR THE SCHOOL DISTRICT DERIVED FROM REVENUES RECEIVED BY THE UNITED STATES FROM VISITORS TO THE GRAND CANYON NATIONAL PARK -- IN OTHER WORDS, GATE RECEIPTS. BY SUCH TERMS AS PRESCRIBED BY THE SECRETARY OF THE INTERIOR, PAYMENTS WOULD BE MADE TO THE SCHOOL DISTRICT FOR EDUCATION, OPERATIONS AND MAINTENANCE.

NO INSTITUTION CAN OPERATE IN A FUNDING VACUUM. A STABLE FUNDING SOURCE IS A CRITICAL COMPONENT OF SOUND MANAGEMENT PRACTICES. ASKING THE CONGRESS FOR A LINE-ITEM APPROPRIATION YEAR AFTER YEAR DOES NOT GUARANTEE SUPPORT ON A CONTINUING BASIS. MR. CHAIRMAN, WHEN THE CONGRESS CONSIDERED THIS MATTER PREVIOUSLY, IT ASSUMED THAT REQUESTS FOR APPROPRIATIONS WOULD BE FORTHCOMING. UNFORTUNATELY, SCHOOL YEARS

- 5 -

HAVE COME AND GONE, AND WE HAVE YET TO SECURE ANY FUNDING FOR PUBLIC LAW 95-224 AS AMENDED BY PUBLIC LAW 96-581. AS YOU RECALL, MR. CHAIRMAN, THESE PUBLIC LAWS ESTABLISHED A SPECIAL ACCOUNT UNDER THE DEPARTMENT OF THE INTERIOR FOR THE OPERATION AND MAINTENANCE OF THE GRAND CANYON SCHOOL DISTRICT.

AGAIN, WE ARE TALKING ABOUT THE EDUCATION OF CHILDREN OF FEDERAL EMPLOYEES. I BELIEVE IT IS QUITE CLEAR THAT THE FEDERAL GOVERNMENT IS NOT PROVIDING ITS FAIR SHARE OF ASSISTANCE TO THIS SCHOOL DISTRICT.

THE PRESENT CONDITION OF THE SCHOOL AND ITS FACILITIES ARE IN A DISTRESSING STATE. SERIOUS FIRE AND OTHER LIFE-THREATENING HAZARDS MUST BE CORRECTED. IN A LETTER I RECEIVED RECENTLY FROM THE SCHOOL DISTRICT, I WAS TOLD THAT IN ORDER TO ELIMINATE THE MOST URGENT LIFE THREATENING HAZARDS, THE DISTRICT BOARD COMMITTED ALL OF ITS CAPITAL LEVY FUNDS TO THE REPAIR OF SCHOOL FACILITIES -- APPROXIMATELY \$160,000 IN 1983-84, AND APPROXIMATELY \$40-\$45,000 IN 1984 - 85. IN ORDER TO MAKE THESE FUNDS AVAILABLE, WHICH BY THE WAY DO NOT COME CLOSE TO THE ESTIMATED \$2 MILLION WORTH OF CRITICAL RENOVATION AND REPAIR FOR THE SCHOOL FACILITIES, THE SCHOOL HAS HAD TO ELIMINATE PROGRAMS AND REDUCE ITS TEACHING STAFF. MR. CHAIRMAN, OBVIOUSLY THIS CANNOT CONTINUE WITHOUT AFFECTING THE QUALITY OF STUDENT INSTRUCTION.

WE HAVE HERE TODAY A REPRESENTATIVE FROM THE SCHOOL DISTRICT, MR. DAVID CURD, WHO HAS DEDICATED MANY HOURS OF HIS TIME TRYING TO FIND SOME RESOLUTION TO THE SCHOOL'S FINANCIAL PROBLEMS. I AM SURE HE WILL PROVIDE YOU WITH SOME RATHER STARTLING FACTS AND FIGURES.

Mr. Chairman, I will conclude my statement by repeating that the school district is facing a desperate situation and this legislation provides a simple and sensible solution. On behalf of the School Board and the parents of these 220 children, I urge the Committee to favorably report this measure. As you know, the Summer Olympics will be held in Los Angeles in 1984. As a result, it is anticipated that gate receipts from visitors to the Grand Canyon will increase by about 15 percent in 1983 and about 20 percent in 1984. It is my view the sum to be derived from these increased receipts should rightfully go to the Grand Canyon School District as a partial payment for the excellent job Federal employees at the Grand Canyon have done to make this national park one of this nation's finest.

Thank you, Mr. Chairman.

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BARRY GOLDWATER
ARIZONA

United States Senate

WASHINGTON, D. C. 20510

June 27, 1983

ARMED SERVICES
INTELLIGENCE COMMITTEE
ARMED SERVICES
NATIONAL DEFENSE COMMITTEE
FOREIGN RELATIONS
STRATEGIC AND TACTICAL NUCLEAR FORCES
COMMERCE, SCIENCE, AND TRANSPORTATION
COMMODITIES COMMITTEE
AGRICULTURE
NATURAL RESOURCES, AND SPACE
INDIAN AFFAIRS

The Honorable Malcolm Wallop
Chairman, Subcommittee on Public Lands and Reserved Water
Committee on Energy and Natural Resources
United States Senate
Washington, D. C. 20510

Dear Mal:

The funeral mass for my old friend, Bill Miller, prevents me from being with you this morning, but I did want to put in a few words of support for S. 598 and S. 600, for which you will be receiving testimony.

S. 598, which would convey 1.10 acres of Forest Service land to the Town of Payson, is the result of hard work by the Northern Gila County Historical Society. Presently, the group has no place to display any of its art collection and old farm machinery which represents some of the community's history. In addition, the historical society would like to refurbish and restore the old Ranger station as it was in 1907. All they need is the land on which to build a museum. In addition, the school district would be allowed to continue to use the buildings on the Forest Service land for storage.

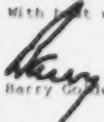
This bill is very important to the community of Payson. I don't think an acre is too much to ask for and it would mean a lot to those people who live there.

As for S. 600, this is pretty much the same legislation which the Senate passed last year. Basically, it establishes a special fund of gate receipts from the Park for the Grand Canyon School District to be administered by the Secretary of the Interior. Simply put, this school district has a minimum tax base and the children who go to school are children of federal employees who live on federal land. The district does not receive payment in lieu of tax assistance and its financial support from the State of Arizona is decreasing.

The special fund would be for the operation and maintenance of the school. There is no authorization to use the funds for construction; however, it is estimated that \$1 to \$2 million over one to two years is needed to bring the facilities up to the required health and safety standards.

Mal, these are two good bills and I hope your subcommittee will be able to favorably review them.

With best wishes,


Barry Goldwater

Senator WALLOP. Thank you very much.
Mr. Axelsen?

STATEMENT OF MILO AXELSEN, CALDWELL, IDAHO

Mr. AXELSEN. I previously have submitted written testimony which I think are on file. I just wish to add a few words more.

My name is Milo Axelsen. I reside in Caldwell, Idaho, and I am one of the increments involved in this Senate bill 482 for which I am here to testify. It is my opinion and feeling that this bill should pass.

We as entrymen filed on this land in 1964. Originally plans were conceived in 1963 and during 1963 and 1964 all of the local BLM officials were all the time advising and encouraged an approved plan and thought it was a very feasible plan for irrigation.

They were very much in favor of it. After final proof was submitted, 2 years later the contests were initiated by the Government. As a result of 38 days of testimony transpiring over approximately 14 months, the Government sought to prove bad faith on the entrymen.

The Government spent a year researching it and found nothing. As a result, the hearings examiner held that—and found after each entryman had testified that there was no basis in fact in any of the testimony and there was nothing but good faith and compliance with the law was made by the entrymen.

Then Assistant to the Director has stated in his written testimony and orally this morning that primarily it was a legal objection in backing off from their previous testimony and position when the contest was being heard by the hearing examiner.

The opinion of the hearing examiner has at all times been adopted by the district court when they heard it in Boise. He adopted the findings of fact and also the appeals board and secretary in their appeals from the examiner's decision, and so it is the findings of fact except as to the legal conclusion that violated the law and the injustice of it seems to be that we all relied upon opinions and statements made by the local BLM officials there.

Then the judge, in his oral decision, also has written judgment in the matter after adopting the findings of fact of the examiner, and from his own practice of law, that that was the ordinary and customary procedure in developing the entries that had been for years and years.

Of course his original decision was to vacate the decision with respect to canceling the entries and giving us an opportunity to refile and keep them alive. After 20 years, it seems like we were unjustly treated by the Government and also by the department officials from Washington.

This came out of the hearing and appeared in the files that they approved all of our plans.

We feel we shouldn't be deprived of what would be a great economic benefit to us. Primarily that is my opinion. I thank you very much.

[The prepared statement of Mr. Axelsen follows:]

Route #8, Box 213
Caldwell, Idaho 83605
June 21, 1983

Senator Malcolm Wallop, Chairman
United States Subcommittee on
Public Lands and Reserved Waters
Washington, D.C. 20510

Re: Hearing on S. 482 on June 27, 1983

Dear Senator Wallop:

This has been prepared in support of Senate Bill No. 482, hearing upon which is scheduled before the above subcommittee on June 27, 1983.

Senate Bill No. 482 was introduced to rectify a gross injustice inflicted upon the entrymen who sought to acquire certain lands in Elmore County, Idaho, pursuant to what is known as the "Desert Land Act." Under the provisions of the law, filings are made with the Bureau of Land Management and upon approval by the Bureau that lands are suitable for farming by irrigation and satisfactory proof submitted that the applicant has a source of water sufficient to irrigate and farm the lands, the entries are to be allowed and the applicant thereupon may enter the lands and with irrigation produce agricultural crops thereon.

In the Sailor Creek project of which I am writing, twelve entrymen filed upon the lands between January 9, 1963 and June 14, 1963. The filings of my wife, Peggy Axelsen, and myself were approved on March 3, 1964 and I believe were the last two entries to be approved in this project.

Attached hereto are the names and serial numbers of the entrymen to whom I relate and this is intended to be in support of all the entrymen in our project known as "Sailor Creek".

Sailor Creek Water Company commenced construction of the pumping facilities in the fall of 1963 with all necessary permits from the State of Idaho and the Bureau of Land Management.

Senator Malcolm Wallop, Chairman

June 21, 1983

Page - 2

The project for the water system for irrigation was privately financed and was designed to irrigate not only lands of the twelve entrymen, but also about 2,000 acres of privately owned lands. Water was to be lifted from Snake River approximately 550 feet to the desert entries and the other lands. Permits for the diversion of the waters of Snake River were obtained by each entryman and submitted to the Bureau of Land Management with each application for entry.

The Bureau of Land Management personnel advised the entrymen and were consulted at all times during the construction and granted easements on Bureau of Land Management lands. Mr. Campbell, an engineer with the Bureau of Land Management devoted a lot of time on this project. Specifications, plans and its feasibility had to be approved by the Bureau of Land Management before allowance of the entries. Also feasibility reports and plans for the farming practices had to be approved before allowance by the Bureau of Land Management for each entry.

The twelve filings were approved and the entrymen began farming operations in 1964. The project proved the land to be exceptionally fertile and farming was very successful for 1964 and all subsequent years up to this time.

The "Desert Land Act" was intended to provide for development of farm lands without any expense to the Government. The per acre cost to the entrymen was less than \$300.00 per acre compared to costs exceeding \$1,000.00 per acre for government subsidized projects in the West. The purpose was for the settlement of lands and development of agricultural lands in the West.

On June 8th and 9th, 1964 final proof, showing cultivation and water for irrigation applied to the land was submitted to the Bureau of Land Management. Normally patents would be issued shortly thereafter.

After two years, in June, 1966 a contest of all entries was instituted by the Interior Department. Hearing upon this contest commenced in Boise, Idaho on June 26, 1967 and was completed on August 1, 1968 before John R. Rampton, Jr., a hearings examiner for the Department of the Interior. At this hearing all the entrymen were examined and testified.

Senator Malcolm Wallop, Chairman
June 21, 1983
Page - 3

His decision was rendered on January 29, 1971 and set forth in detail all of the things, contracts and agreements of all the parties. His decision unequivocally found all matters contested in favor of the entrymen and against the Government. Copies of this decision can be furnished to the committee. The facts in this decision were adopted in subsequent court proceedings as to the facts in this matter. The decisions adverse to claimants were all based upon the "holding" of in excess of 320 acres, and the leasing of the lands by the entrymen. All of these arrangements which the courts held illegal were known to the agents of the Bureau of Land Management, discussed at length with them and approved by the local Bureau of Land Management. These arrangements as to the leasing of the lands had consistently been allowed by the Department to former entrymen.

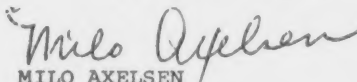
Nothing was done by the entrymen clandestinely or was unknown to the local Bureau of Land Management personnel. Had any objections whatever been brought up, the entrymen could have changed and would have changed their agreements with respect to the entries. Admittedly the good faith and honesty and intentions of the entrymen were to fully and completely comply with all the laws concerning desert entries.

Almost twenty years have elapsed since the entries, and particularly for myself, I feel the Government should feel bound by its employees and good faith should be expected of the Bureau of Land Management.

The Bill purports to give us all a chance with new guidelines and rules set by the Department which became effective after the final proof for patent was submitted.

Our only relief is in this Bill which I feel should pass to correct this injustice, which has been very costly to all concerned. Nothing in this Bill would change the Laws or Rules relating to the Desert Land Act.

Respectfully submitted,


MILO AXELSEN
Idaho 014251

NAMES AND NUMBERS OF SAILOR CREEK PROJECT

Milo Axelsen	Idaho 014251
Peggy M. Axelsen	Idaho 014252
Charlene S. Baltzor	Idaho 014128
George R. Baltzor	Idaho 014129
G. Patrick Morris	Idaho 013820
Nellie Mae Morris, successor in interest of John E. Morris	Idaho 014130
Juanita M. Morris	Idaho 014249
Nellie Mae Morris	Idaho 014250
Elise L. Neeley	Idaho 013906
Vera M. Baltzor	Idaho 014126
Joan E. Roth	Idaho 013905
Lyle D. Roth	Idaho 013907

Senator WALLOP. Thank you very much, Mr. Axelsen.
Mr. Morris.

STATEMENT OF G. PATRICK MORRIS, BOISE, IDAHO

Mr. MORRIS. Yes. I am G. Patrick Morris. I was often a spokesman for these 12 entrymen dealing with the BLM in preliminary negotiations and also with financial institutions in attempting to get financing for these entries.

In the last 20 years or the last 15 years, there are many—there have been many words spoken and statements written concerning the Bureau's knowledge of the fact that the entries were leased.

Again, I would like to call, as Mr. Axelsen did, the chairman's attention to the administrative law judge's decision after 38 days of testimony. He said that—and that decision is on pages 17 and 18—that statement is on pages 17 and 18 of his decision—that he had found that the Government is aware of the fact that the entrymen were going to obtain 100 percent financing, that they were going to lease their entries to a single farming entity, and not only did the Bureau know of this arrangement but they encouraged this arrangement.

He further said that all allegations against the entrymen should be dismissed and instructed the Secretary of the Interior to issue patents. These lease arrangements were then brought before the ninth circuit court judge, Blaine Anderson, in the district court in Idaho, and he said that he had personal knowledge the development leases were arranged—excuse me, the development leases were encouraged with full knowledge of the Bureau in southern Idaho at the time, and that he was personally involved with scores and scores of development leases on desert land entries in his own private practice.

Not only was this the common practice of that day and we feel that the Bureau changed their attitude on development leases and we felt we just got caught in between.

We are hopeful that this committee and this Senate will straighten this out for us. We thank you and if you have any questions I would be happy to answer them.

[The prepared statement of Mr. Morris follows:]

STATEMENT OF DEVELOPMENT OF THE
SAILOR CREEK PROJECT NEAR GLENN'S FERRY, IDAHO

After we harvested the crops in 1962, I decided to spend the winter looking for land along the Snake River whereby we could put together a farm development project similar to the Dry Lake Project near Melba, Idaho. We then went to Boise and purchased topographical maps of the Snake River looking southwest from Twin Falls to the Oregon border. After spending several weeks and driving hundreds of miles to inspect the land, we decided that the best possible desert entry available to us at the time was approximately two miles south of Glenn's Ferry, Idaho, which today is known as the Sailor Creek area.

In early January, 1963, my wife and I, together with several members of the family, made several desert entries in the Sailor Creek area.

Once we had made several entries in this area, we set out to get classification of the entries and mortgage money to finance the project. We also had several meetings with the BLM concerning an experimental grass study they were doing up in the area and requested that they release all land that they were not using in the study, but had been withdrawn in the federal registry, so that we could get additional people to file on that property as well.

We knew in order to attract financial support and also to defray the cost of a high lift project, we had to have approximately 3,000-4,000 acres under cultivation. That meant that there had to be at least 10 to 15 desert entries in the area in order to make the project feasible and successful.

I contacted the FHA and Traveler's Insurance, together with W. R. Aimes Sprinkler Company, to see if there were monies available to develop a project of this magnitude. Although all expressed some interest, no financing was secured from any of these companies or institutions.

Meanwhile, I became a little concerned that I had not heard from the BLM concerning classification of the entries. I went to Boise one day to see Kirk Taylor at the state office of the BLM and asked him how he was proceeding on concerning the classification of these entries.

He informed me that he had done nothing concerning the classification and would not do anything because he felt that none of the entrymen had adequate financing, some of them didn't have farming experience, and that the project could easily fail unless the entrymen banded together and had adequate financing together with a strong farmer or a group of strong farmers that would farm the land for all the entrymen.

I asked him if he would consider going up and looking at the property for classification. He informed me that it would not be necessary since the land virtually had been classified by the

Bureau of Reclamation in a book known as the Snake River Project published in Boise, Idaho, in February, 1960. I was not aware of this book, and he instructed me as to where I could get a copy. I then went over to the Bureau of Reclamation and received the 142nd copy of that publication.

I would like to make it perfectly clear that from the outset, the Bureau of Land Management, through their state office in Boise, not only encouraged me to find strong farmers that would lease this project on a crop or cash basis, but informed me that the project probably would not be approved unless we had a group of strong farmers to farm the land.

After talking with several farmers from eastern Idaho, I went to Alan Noble who was farming several thousand acres in the Dry Lake Area and asked him if he would go up and farm this property if we could get adequate financing to put in the water system.

The only financing that seemed to be available at that time was through Hiller Corporation out of San Jose, California.

In late summer, we finally entered into an agreement with Hiller Corporation. We obtained the services of Harley McDowell in order to help us prepare the final feasibility study, surveying of the entries, and proposed engineering plan for development.

Once we obtained the services of Harley McDowell and the possibility of financing from Hiller Engineering Corporation, the Bureau of Land Management Office then had me go talk with a man by the name of Tom Campbell in the district office who would actually classify the land. I met with Tom several times, and he was very helpful and assigned his assistant, Bob Rawlings, to help do the field work for the proposed project. It was Bob Rawlings' responsibility to ~~determine how much of a fee we were to pay the~~ Bureau of Land Management for the grass seeding they had done on the entries some years before.

At this point in time, I would like to emphasize that the state office of the Bureau of Land Management and the district office of the Bureau of Land Management in Boise, Idaho, were all very enthusiastic about the proposed project. We were developing the project the way they requested; that is, we would have adequate financing from an institution that would put in the water system, we would have a farmer, Alan Noble, who was very experienced in running large farms and had adequate financing to farm a project of this magnitude. It was through the Bureau's direction and encouragement that we decided to develop this project in this manner. From the beginning of this project, very few of the entrymen had ever planned to farm their entries. This fact was fully disclosed to the state and district offices.

All of the entries were allowed by late 1963 and early 1964, and construction of the water project started in late 1963 and was completed in early 1964, at which time all 12 entries were farmed and were planted to potatoes and grain.

In June, 1964, with the assistance of Harley McDowell, we filed final proofs on our entries.

Sometime after final proof, the bureau requested that they have a copy of all contractual agreements that we, as entrymen, had made between Alan Noble and myself, and also between the joint venture of Farmland of Idaho and Hiller Engineering Corporation. We supplied those documents to the bureau. Little was heard from the Bureau until almost two years later when they filed a notice that they were going to contest the entries on the grounds that the farming company was holding more than one entry.

It is amazing to me that as of this date, little has been said about my particular entry in that I only had a one year farming agreement on a sharecrop basis on my entry, although all other entries did have a two year lease with two five year options with myself and Alan Noble. Certainly, my entry does not fall in the same category, although little has ever been said about that.

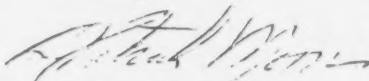
In June of 1967, an administrative law judge by the name of John R. Rampton from Salt Lake City came to Boise, Idaho, to conduct hearings on the contested entries. After approximately 38 days of testimony over the next year and two months, Mr. Rampton dismissed every allocation against us and ruled that the patents should be issued.

The Department of the Interior then appealed John R. Rampton's decision to the Interior Board of Land Appeals. The board ruled against us saying that the government was not informed of the terms of the lease agreement until after it made specific requests for said terms. This statement is in total contradiction of my personal testimony. I testified before the administrative law judge that not only did the government know about the leasing, but it was in my opinion that they would never have permitted allowance of these entries if, in fact, we did not have a strong farmer to farm said entries. That was my testimony in 1967, and that is my firm belief in 1983.

We, as entrymen, then appealed the Interior Board of Land Appeal's decision to district court. On December 10, 1976, Judge Blaine Anderson, United States Circuit Court of Appeals, found that the administrative law judge was right and that the bureau was aware of the fact that the entrymen intended to lease their entries from the outset and that there was absolutely no policy within the Bureau of Land Management at that time against such development of desert entries. Judge Anderson also said in his decision that he himself was involved in scores and scores of desert land entry when he was in private law practice around the Blackfoot area, and it was a common practice of the times in the late 1950s and early 1960s that desert land entries were developed by what was commonly called development leases.

It seems that we have run our course in attempting to obtain what we feel we have rightfully coming to us. Our course of "last resort" is that this private bill be passed so that we will know the regulations and can obtain the title to our properties under present regulations. There has never been an attempt by any of the entrymen to misuse or run roughshod over the law. We felt that we developed these entries according to the common practice of the day in 1963 and 1964. However, if given the permission to do so, we will develop said entries under the current laws and regulations. All these entrymen filed on this land to have title and use of their land for their personal use and estate. It is my sincere hope that this dream of twenty years can come to pass.

Thank you.



G. Patrick Morris

Senator WALLOP. Thank you very much, Mr. Morris.
Senator McClure?

**STATEMENT OF HON. JAMES A. MCCLURE, A U.S. SENATOR FROM
THE STATE OF IDAHO**

The CHAIRMAN. Thank you, Mr. Chairman. I very much appreciate the fact that once again people from Idaho have had to travel 2,500 miles to testify to try to find a solution to a problem that was almost wholly created by the Federal Government.

It was almost wholly created by a government that changed its mind in the process and obviously I think the legislation is justified or I wouldn't have introduced it so that probably doesn't come as any surprise to you, Mr. Chairman.

I commend these gentlemen but I want to focus on just a couple of facts that are in every one of these statements and that is that these arrangements were well known by the Bureau of Land Management at the time they were made.

They were in many instances suggested by the Bureau of Land Management at that time as the appropriate way to proceed. The entrymen had a lot of hurdles to get over to get a desert land entry approved at all.

The Government hasn't actually been terribly forthcoming on that issue. We have a backlog of 250,000 acres of desert land entries and I know of some that are 20 years old.

You know and I know of people that have had their life savings completely used up in the process of just trying to get the opportunity to do what the law says they can do, and that is to file on land if indeed there is land that is available that is irrigable, it is suitable land, and there is available source of water.

These entrymen involved in these cases got passed that hurdle. They got the financial arrangements put together that the Government suggested and approved. They went ahead and did what the Government required of them and after the fact the Government changed its mind and said well, we think maybe we should have looked at things a little differently.

It seems to me if the Government wants to change its policy, it ought to do so prospectively and not retroactively. We can argue about what the policy ought to be, but it shouldn't catch innocent

victims that have invested their time, their money, their toil, and their expertise and administrative skills over a long period of time only to have Government later say well, fellow, we think we were wrong. You shouldn't have done it that way. We are going to take the land away from you.

I think it is constructive perhaps to look at what happens when the Government does stop one of these developments. The Government has before it photographs taken of two different areas, one that is in litigation at the present time and not being farmed, Black Mesa.

The other one is the Grindstone Butte project. We could look at the other one that was the granddaddy of all of them in this litigation process and that is the Indian Hills that lies out there growing weeds and controversy and nothing else.

I hope the committee will look at this legislation favorably. It isn't the perfect situation and it may not even be the perfect answer. But as the photographs will show, that land grows beautiful crops when managed well.

It has to be under the appropriate structure and appropriate financing and appropriate land management, and then it is a very productive land and it enhances the food supply for this country as well as the tax revenues to local governments.

You can get no more dramatic evidence of the value to the country than the contrast in the two sets of photographs which have been provided to the committee. In addition to that, there is a substantial equity on behalf of the people that are involved here and I hope the committee will act favorably.

Senator WALLOP. Thank you, Senator McClure, and thank you, gentlemen, for making the long trip here to explain that.

Mr. AXELSEN. Thank you.

Senator WALLOP. The next panel consists of Mr. Charles Robinson, Jr., deputy general manager of the National Rural Electric Cooperative Association in Washington.

STATEMENT OF CHARLES A. ROBINSON, JR., DEPUTY GENERAL MANAGER, NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION, ACCOMPANIED BY A. HAROLD PETERSON, EXECUTIVE DIRECTOR AND COUNSEL, NATIONAL REA TELEPHONE ASSOCIATION; AND ANDREW BROWN, LEGISLATIVE COUNSEL, NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

Mr. ROBINSON. Good morning, Mr. Chairman. We deeply appreciate your taking the time to hear us out this morning. Mr. Chairman, members of the subcommittee, my name is Charles A. Robinson, Jr., and I am the deputy general manager of the National Rural Electric Cooperative Association.

With me are Mr. A. Harold Peterson, executive director and counsel of the National REA Telephone Association, on my left. On my right, Mr. Andrew Brown, legislative counsel of the National Telephone Cooperative Association.

Also with me in the room but not at the witness table is Mr. Tony Perkins, the NRECA legislative representative working on S. 508 for us. Each of our respective organizations has prepared a written statement citing forth the particulars of our respective po-

sitions in some detail and we ask that these statements be included in the record. Our presentation will be rather brief.

Senator WALLOP. By all means.

Mr. ROBINSON. We appreciate this opportunity, Mr. Chairman, to express our strong support for S. 508, a bill which would exempt REA electric and telephone borrowers from charges for rights-of-way across Federal lands now being imposed under the color of the Federal Land Policy and Management Act of 1976.

It is the policy of the Federal Government and of Congress as expressed in the Rural Electrification Act that the rural areas of the United States be provided with reliable electric and telephone service.

REA borrowers provide a valuable public benefit in extending electric and telephone service to rural areas. Most of these rural areas are difficult to serve because of the large geographical territory covered and the extremely low consumer density.

The newly established policy of the Federal Land Management Agency of charging a few to REA borrowers for rights-of-way across Federal land is inconsistent with accomplishing the purposes of the Rural Electrification Act.

These REA-assisted electric and telephone systems are providing a critically important service to the most sparsely populated areas of the country and at rates to the consumer which without REA assistance would be substantially higher.

It makes no sense for one agency of government to extend financial assistance to a congressionally mandated activity only to have another agency of the same government levy a fee against the same activity.

The charging of these rights-of-way fees results in increasing the cost of service to rural electric and telephone consumers who already pay 12 percent higher rates for service than their urban counterparts.

We are also concerned about the precedent that could be established by the policy of the Federal Land Management agencies imposing rights-of-way fees. If this policy is not reversed, it could encourage State, local and municipal governments to also charge fees for rights-of-way.

Indeed, private landowners who now provide right-of-way at no cost whatever as a condition of receiving service might also start commanding fees. The result would be to raise the cost of providing electric and telephone service to all rural consumers.

In many sections of the country, Mr. Chairman, the Forest Service and the Bureau of Land Management are the only landowners which are demanding or are entitled to receive payment for distribution line right-of-way from electric cooperatives, no one else—and telephone cooperatives.

In summary, we believe that the public good is served by the policy of providing reliable electric and telephone service to rural America at reasonable rates. We believe that we have been rather successful in performing this function with the help of the Congress and the Rural Electrification Administration.

The charging of fees for rights-of-way by the Federal Land Management agencies is contrary and counterproductive to this policy.

For this reason, we urge the subcommittee to approve and Congress to enact S. 508.

S. 508 does not more than make certain that the policy enunciated by Congress in the Federal Land Policy and Land Management Act of 1976 is carried out and reimpose the same policy as until recently has prevailed.

The administration position on this legislation seems to presume that REA-assisted utilities receive some special benefits from their use of rights-of-way across Federal land.

It is our position, Mr. Chairman, that it is really the public who has received this benefit and it is the public which owns the land in question. That concludes my prepared oral statement.

I would like to also offer for the record a letter which I received just this morning from Mr. E. T. Martin, general manager of the Clay Electric Cooperative, of Keystone Heights, Fla., dated June 24, 1983.

If I might quote from two paragraphs of Mr. Martin's letter. These two paragraphs read as follows:

We received two bills from the USDA and Forest Service in December 1982. One is for Clay Electric's distribution lines of \$21,982.53 and one is for transmission lines of \$3,377.23. These bills are the first bills ever received from the U.S. Forest Service for the permits issued to Clay Electric Cooperative. The payment was due on January 1, 1983. A late charge has been added each month.

Clay Electric Cooperative does not pay for distribution line easements or permits. Part of the requirement for electric service to our members is that all distribution system easements or permits must be furnished by the landowners."

Mr. Martin's case, the manager of Clay Electric Cooperative, that \$21,982.53 charge, an annual charge, and to charge for 177.31 miles of distribution line—now Mr. Martin encloses with his letter a copy of the bills which he received from the Forest Service, a copy of a map showing where these lines are located, and an amendment to his preexisting permit which shows very clearly that prior to December 1982 he had never been charged for any rights-of-way across these public lands.

So these are not de minimus or negligible charges, Mr. Chairman. If I might, I would like to offer Mr. Martin's letter and enclosures for the record in a file as you think appropriate.

Senator WALLOP. Who is this? I can't remember who he is—his name. Does he say who they service at the end?

Mr. ROBINSON. Yes, sir. I might quote from another part of his letter:

Clay Electric Cooperative's distribution lines serve approximately 8,000 members in the Ocala and Osceola National Forest.

A large number of the members have hunting camps or weekend places which are low-revenue producing accounts and must be subsidized by other members. Adding a permit fee would add to the cost of electric service to the rural people of north central Florida ***.

Senator WALLOP. What do you make of Mr. MacCleery's statement that the average—this Forest Service permit is \$1,000. A permit is only one part of it, is it not?

Isn't there a charge that goes as well?

Mr. ROBINSON. It is difficult to tell from this letter. I understand though that in many cases administration fees are also imposed. Perhaps one of my colleagues can answer that. Mr. Brown?

Mr. BROWN. Senator, on the House side recently we had hearings on very similar legislation, and at that time we made it very clear that administrative costs were not what we are trying to get at.

It is the rental fees on an annual basis that are being charged. We are still waiting for some definitive information from the administration regarding the numbers and the dollars involved in this entire question.

At one point they were trying to make an argument on the House side that this was a very small problem and it was going to be a very small burden on individual ratepayers, telephone and electric ratepayers.

Then asked to characterize the size of the money involved in this issue, they cast it in terms of millions of dollars and yet could not give us any real figures. So when he throws out a number like \$1,000 this morning, we cannot put it in a context of exactly what the costs are associated with this problem.

Senator WALLOP. His statement was that it was an average of \$1,000 per permit.

Mr. BROWN. Without knowing the specifics as who he is charging and the size of the cooperative involved it would be very difficult to give you an answer in terms of what its impact would be on a specific cooperative. We would be glad to explore this further with your Staff.

Senator WALLOP. One of the things we would have to find out is what they permit—I mean what a permit covers.

Mr. BROWN. Yes.

Senator WALLOP. Whether one rural line has a permit or several or what. It makes a difference, quite a bit of difference.

Mr. BROWN. Absolutely.

Senator WALLOP. I have a great deal of sympathy with the cause and purpose of this legislation. It may be that we would have to figure out something dealing with large commercial customers as opposed to the original purpose of the legislation—rural householders and rural agriculturalists with sprinkler systems, water wells, those kinds of things.

We will take a look at it and I am very sympathetic to it and see if we can't get something done.

Mr. PETERSON. Mr. Chairman, I would like to enunciate on behalf of the National REA Telephone Association our complete concurrence in the summary which Mr. Robinson has just presented.

It would be redundant if I would go over the very things that he has mentioned. We think it is quite important that when the administration testifies about amounts only being such and such, that really is not the issue.

The issue is whether or not a precedent is going to be set here that in future years could be used as a basis for increasing those fees as time goes on. We all know what the constraints are upon the Federal Government, State governments and municipal governments for exacting as much tax as they can.

To us, the basic issue is whether or not the original intent of Congress is going to prevail; that is, to be sure that electric and telephone service is brought to people in rural America at the cheapest possible cost.

To us, this is not only a contradiction, what is being done, but it just flies in the face of what Congress has already mandated. We are only asking that the fees that they seek to impose, that these companies who receive that financial assistance in those rural areas, be exempt from those fees.

The other portions of the act which provides that companies shall pay for the administrative costs or whatever cost is necessary in the granting of the permit, they would be willing to pay.

Senator WALLOP. Mr. Brown, I think that is an important distinction and I appreciate it.

Mr. PETERSON. You know, Mr. Chairman, based on a comment you made earlier in the day here that telephone companies in America, especially the ones that are served by REA-financed companies, are now undergoing tremendous worries and concern.

Unfortunately come January 1, 1984, people who are not responsible for the blame are going to be blamed for what is going to happen—are going to be blamed—and that is the Members of Congress.

It is very unfortunate because it is a wonderful system that we have had in this country for over 50 years that has brought us modern telephone service at reasonable rates is about to change and the burden is going to be imposed upon the consumer more and more.

We are fighting tooth and nail to protect the rural areas of our country from that kind of a happening and we know that Members of Congress are very concerned about it because they are suddenly getting that kind of input.

Senator WALLOP. I think it is a shame that our national paranoia about bigness led us to a circumstance where the average citizen is the one who is most burdened by our reaction to that paranoia when it was doing nothing but service to the country.

If it was profitable, it was also profitable for those of us who subscribed to those services compared to anywhere else in the world. That is a court decision we all apparently are going to have to live with, find a way to put some sense back into it.

I appreciate your testimony. Thank you, gentlemen.

Mr. ROBINSON. Thank you, Mr. Chairman. I wonder if Mr. Martin's letter may become part of the record.

Senator WALLOP. Yes. We will put those into the committee files.

Mr. ROBINSON. Thank you very much, Mr. Chairman. We appreciate the time of the subcommittee.

[The prepared statements of Mr. Robinson, Mr. Peterson, and Mr. Brown and the letter submitted by Mr. Robinson follow:]

STATEMENT OF
CHARLES A. ROBINSON, JR.
FOR THE
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

Mr. Chairman, members of the subcommittee, I appreciate very much the opportunity to appear in support of S. 508, a bill to exempt REA electric and telephone borrowers from charges for right-of-way across federal lands under the Federal Land Policy and Management Act of 1976 (FLPMA).

The National Rural Electric Cooperative Association (NRECA) is the non-profit, national service organization of some 1,000 rural electric cooperatives in 46 states. These cooperatives provide electric service to more than 25 million consumers. They own and maintain nearly 44 percent of the nation's electric distribution lines and distribute about 11 percent of its electricity.

Prior to the enactment of FLPMA (Public Law 94-579) it was the policy of the federal land-management agencies (U.S. Forest Service and Bureau of Land Management) to impose no charge on rural electric cooperatives for right-of-way across public lands. This was consistent with the agencies' long-term policies granting state and local governments and non-profit organizations special price considerations under appropriate circumstances.

During consideration of FLPMA, suggestions were made to modify these policies. Congress, in adopting the House Report, rejected these suggestions, and specifically endorsed and supported their continuation (House Report 94-1163).

As enacted, the Federal Land Policy and Management Act of 1976 requires that a holder of a right-of-way shall pay annually the fair market value of such right-of-way as determined by the Secretary (Interior or Agriculture). FLPMA also provides that a right-of-way may be granted to non-profit associations or corporations "...or to a holder where he provides without or at reduced charges a valuable benefit to the public..." "...for such lesser charge, including free use as

-2-

the Secretary concerned finds equitable and in the public interest." Rural electric cooperatives, as non-profit, consumer-owned utilities, clearly fall within the category of organizations eligible for waiver of right-of-way fees. Both the U.S. Forest Service and Bureau of Land Management, however, have taken the position that rural electric cooperatives should be charged full market value for right-of-way across public lands. This position is in sharp conflict with government policy under the Rural Electrification Act.

Under the REA program the federal government promotes its policy of providing reliable electric and telephone service to rural areas at a reasonable cost and on an area-wide coverage basis. The federal government also provides funding through REA loan programs to insure that this policy is carried out. It seems inconsistent that the federal government should provide funding to insure that REA policy is carried out and at the same time charge a fee for rights-of-way across federal lands to those carrying out that policy.

The imposition of a right-of-way fee on rural electric systems does nothing more than needlessly increase the cost of service to rural consumers. Rural electric consumers are already at a rate disadvantage compared with their counterparts served by urban utilities. Rates for rural electric consumers average about 12 percent higher than those for other utility consumers. With already higher rates and fewer consumers than other utilities, the addition of a charge for right-of-way has a much greater impact on the rural electric consumer.

-3-

Rural electric cooperatives serve mainly the sparsely populated, rural areas of the country. They are obligated to provide electric service to anyone within their service areas. Typically, a cooperative will be serving a large geographical area, requiring many miles of line, with a consumer density of 4.7 consumers per mile of line. In addition, the revenue per mile of line for electric cooperatives is \$3,370.00.

A final point to be considered is the potential impact of the agencies' position regarding payment of fees for right-of-way on rural electric cooperative operations. Rural electric cooperatives do not presently pay for distribution line right-of-way. In fact, many cooperative by-laws require members to provide all necessary rights-of-way at no cost to the cooperative. Typically, private landowners served by a cooperative will convey a right-of-way to the cooperative, at no cost, for service on their land or that of a neighbor. This is true for lines running along highway frontage and across fields, as well as to the meter.

If cooperatives are required to start paying fees for right-of-way across federal lands, this invites other entities (state and local governments) to put the same type of policies into effect. Indeed, even some private landowners may challenge the cooperative by-laws and demand payment for right-of-way across their property. The result will simply be to increase the cost of electric service to the rural consumer.

In summary, we believe that by most standards of equity and fairness the exemption of REA electric and telephone borrowers from fees for right-of-way across federal lands is fully justified and in the public interest. We, therefore, urge this Subcommittee and the Congress to enact S. 508.

STATEMENT OF
MR. A. HAROLD PETERSON
EXECUTIVE DIRECTOR AND COUNSEL
NATIONAL REA TELEPHONE ASSOCIATION
BEFORE THE
SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER
OF THE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
U.S. SENATE
S.508

Monday, June 27, 1983

Mr. Chairman and Members of the Subcommittee, I am A. Harold Peterson, Attorney, of Chisago City, Minnesota. I appear before you today in my capacity as Executive Director and Counsel of the National REA Telephone Association. Our Association is pleased to have the opportunity to join with the National Rural Electric Cooperative Association and the National Telephone Cooperative Association this morning in expressing our support for S.508, legislation designed to exempt REA electric and telephone borrowers from the imposition of right-of-way rental fees for transiting federal lands.

The National REA Telephone Association is a national trade association composed of those privately-owned telephone companies who borrow their capital funds from the Rural Electrification Administration (REA), a federal agency within the Department of Agriculture. Among the over 1,000 telephone

companies who are financed by REA, the privately-owned companies comprise approximately 74% of the total. The remainder are cooperative type companies. REA telephone companies operate in 46 states and in 2100 of the nation's 3100 counties. Together with the rural electric and telephone cooperatives, the members of our respective organizations provide electric and telephone service to America's rural areas.

Mr. Chairman, some background concerning the REA program may be in order to provide a better understanding of the underlying premise on which this legislation is based. The cost of providing electric and telephone service in the less densely populated areas of the country served by REA companies is much higher than in the urban areas. Federal support was needed to electrify rural America because most established utilities served high density areas and did not extend lines to farmers and other rural residents as these higher costs made it economically unfeasible to do so. Therefore, in 1936 Congress established the REA to assure that funds would be available to do this job. Low cost loans were made available, regardless of corporate structure, to anyone who was willing to accept the Rural Electrification Act's obligations of providing area-wide service coverage. It is a program for people -- the people who live and work in the less populated areas of our country and who need essential services.

In 1949, the Act was extended to provide low interest loans for telephone service on the same basis. As in the case of electricity, it became clear that rural residents would not have access to quality, dependable telephone service unless Federal support was provided. Both the rural telephone and rural electric programs have been extremely successful in achieving the Act's goals. As of September 30, 1982, REA borrowers had received more than \$53.7 billion from REA loans, guarantee commitments and Rural Telephone Bank loans. The job continues today. In many cases, it is necessary to transit federal lands, particularly in the more remote areas. In some cases, the recipient of the electric and telephone service in these areas is the Federal government itself.

For many years federal agencies provided rights-of-way at no charge to REA borrowers. However, with the enactment of the Federal Land Policy and Management Act the respective Departments established policies of charging fees despite the fact that the Act specifically authorized the granting of rights-of-way across federal lands without charge "... to nonprofit associations or nonprofit corporations ... or to holder where he provides without or at reduced charges a valuable benefit to the public or to the programs of the Secretary concerned." (Sec. 504 (g)). Complicating matters even further, there has been no uniform implementation of these fee charging policies in the field (even though regulations have been adopted) and wide variances exist concerning fee amounts, percentage of fair market value

charged, and generally the basis on which the fees are assessed. Much confusion exists. Many local offices seem to act autonomously. Our Association recently ran a survey of our members concerning this problem. 90 of the 320 companies responding indicated that parts of their present systems transited federal lands. Most of these systems are located in the Western United States. Our colleagues at NRECA and NTCA have found similar results in surveys of their members.

Because of this confusion and lack of uniform interpretation, we believe that legislation is both desirable and necessary to memorialize in the Federal Land Management and Policy Act the national policy long ago recognized by Congress in the Rural Electrification Act: that REA borrowers provide a valuable public benefit in extending electric and telephone service to rural areas. Therefore, they should be exempt from right-of-way fee imposition when transiting public lands.

Rural electric and telephone consumers already pay higher rates for service than their urban counterparts. It makes no sense whatsoever to increase those rates even further by increasing costs through the assessment of right-of-way fees by federal agencies particularly when another federal agency has been designated by Congress to provide assistance to these same consumers through the REA program. Typically, private landowners provide rights-of-way at no cost in rural areas to these utilities and the Federal government should do the same.

It is my understanding that in the State of Oregon, no additional charge is permitted for rights-of-way across state lands since access to the lands are considered to have been paid for when purchased with public funds through the tax process. Rural consumers, whether they are private individuals or the Federal government, are indeed fortunate to have quality electric and telephone service at all in these sparsely populated, high cost areas of the country. It should be the consistent policy of our national government to seek to keep the cost of providing these essential services at a minimum rather than unnecessarily increasing them.

In summary, Mr. Chairman, I believe that the principles embodied in S.508 constitute sound public policy and should be enacted. I want to thank Senator Laxalt and the other sponsors of S.508 as well as the Chairman of this Subcommittee, Senator Wallop, for a continuing interest in this bill. It is, as you know, a matter of some interest in our rural areas -- particularly in the West. I hope that the Subcommittee and the full Committee will consider the bill favorably and report it to the Senate for passage.

STATEMENT

BY

ANDREW BROWN
LEGISLATIVE COUNSEL
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

Mr. Chairman, members of the subcommittee, good morning.

My name is Andrew Brown, and I serve as Legislative Counsel to the National Telephone Cooperative Association (NTCA). NTCA is a national trade association representing over 400 cooperatives and small companies providing telephone service in rural areas in more than 40 states. Most of the financing to build and improve these NTCA member systems has come from the loan programs of the Rural Electrification Administration (REA).

My purpose this morning is to speak in strong support of S. 508, sponsored by Senator Laxalt. This bill clearly expresses the intent of Congress to exempt REA-financed entities from fees under the Federal Land Policy and Management Act of 1976.

The premise upon which our support is based is a very simple one. We at NTCA believe that this bill resolves a sharp conflict between two separate federal policies. On the one hand we have the policy of promoting, through the REA program, the provision of telephone and electric service to rural areas. On the other hand we have the policy of charging entities for easements across federal lands, which our members perceive as part of the Administration's policy of charging user fees in order to generate revenue for the government; the same government that funds the REA program.

In the minds of our members this inconsistency of policies cannot be justified, and they applaud the straightforward legislative approach

suggested by Senator Laxalt to address this matter.

Hopefully, some members of the subcommittee will be convinced of the merits of S. 508 because they are already aware of the importance of the REA program and REA borrowers in rural areas. Support for the Laxalt bill will result in the removal of an avoidable and unnecessary hindrance to providers of rural electric and telephone service.

But, for those members who may not be aware of the role of the REA program in the rural telephone industry, or who may not be aware of the present uncertainties and difficulties that the industry is facing, I would like to take a few moments to provide that information to the subcommittee. As well, I believe that you will understand our support for the bill in front of you if, in addition to talking about the history and present regulatory status of the rural telephone industry, I also outline specific examples of the burden these fees place on individual NTCA members and point out the inappropriate and costly precedent set by these federal easement fees.

In order to give the subcommittee some background on the nature of rural telephony, I must rely on the experience of NTCA's member systems. That experience has been earned in providing service to rural areas where our member systems are truly carriers of last resort. Many of our member systems are consumer cooperatives, organized on a nonprofit basis, with each person who receives service becoming a voting member of the cooperative. Other members are locally owned, closely held corporations, often run by a family or by local investors.

The backbone of this rural industry is the Rural Electrification Administration (REA). The low interest loans provided by this program began in 1949 in order to counteract a trend of deteriorating phone

service in rural areas. This deterioration can be measured by pointing out that in 1920 slightly over 38 percent of the nation's farms had phones. By 1940, only 25 percent had phones, and poor service had become widespread in rural America by the time of the 1949 adoption of the telephone amendments to the Rural Electrification Act.

In order to assure adequate service to all rural residents, Congress mandated area coverage. In return for low interest loans, REA borrowers are required to provide service to the widest practicable number of rural users. This is a statutory requirement which is in all REA loan contracts.

As explained by the 1949 House Agriculture Committee Report, area coverage means:

planning, financing and constructing a rural telephone system so service will be available to all subscribers within the company's area who want it, whether the installation and operation of their particular telephone will be profitable or not.

Thus, cost is not the major factor to be considered in building rural phone systems. The major factor is service. This longstanding policy position flies in the face of recent regulatory trends towards cost-based telecommunications. As your colleagues on the Senate Commerce Committee can attest, regulatory and judicial decisions that promote competition and encourage technological development are going to make it very difficult to maintain universal telephone service in this nation. There is a list of ongoing changes in our telephone industry that are going to make provision of affordable telephone service in rural areas very difficult in the coming years. The list includes the deregulation of customer premise equipment (CPE) and inside wiring; increased depreciation rates; the creation of access charges by the

Federal Communications Commission; and the restructuring of the long distance network in the wake of the anti-trust settlement between AT&T and the Justice Department. Telephone rates are about to go up dramatically. You are going to hear about it from your constituents, particularly in the case of access charges, and our members systems are going to hear about it from their subscribers. The task of providing service in high cost, low density areas is only going to get more difficult for our members, yet it is in this trying period of regulatory change that these telephone systems are faced with one more burdensome -- and to them, indefensible -- cost, labelled easement fees.

I am sure that an argument can be made that these easement fees are not of sufficient size to justify the blanket policymaking that is present in S. 508. However, this subcommittee should be made aware of the impact of this easement fee policy on some of our individual members.

My role this morning is to assure you that this easements problem covers a broad spectrum of our membership and to cite examples of specific problem cases that have cropped up among our members.

An initial survey of our membership revealed that 63 rural telephone systems in 23 states have been affected by federal easement fee policies. A follow-up survey uncovered particular problem areas such as those facing the Dell Telephone Cooperative in Dell City, Texas and the Range Telephone Cooperative in Forsyth, Montana.

The Dell Telephone Cooperative is a particularly difficult case. It serves 435 subscribers located in a total of 7,062 square miles of Texas and New Mexico. Nearly 3,311 square miles are in New Mexico, where they average only 0.17 customers per mile of telephone line.

Frank Dottle, the manager of the Dell Telephone Cooperative,

testified last fall before this same Subcommittee on Public Lands and Reserved Water. I think his problem is best recounted by quoting from his testimony:

Dell Co-op acquired the New Mexico territory in 1981. At that time, there were 100 families in the new area who had never had telephones. We obtained an REA loan of approximately \$3 million to capitalize the new construction. The amount of red tape involved for construction of only one line included obtaining seven easement agreements. Dell Telephone did not have to pay any filing or other fee for six of these permits.

The new territory includes approximately 28 miles of land owned by the Federal government under the auspices of the Bureau of Land Management (BLM). BLM notified Dell Telephone that the cooperative must pay fair market rates for an easement across the BLM land, and that Dell must first obtain engineering and archaeological studies of the property. The archaeological studies were required despite the fact that all of the cable runs in the rights-of-way for existing state or county roads. The archaeological study of the properties cost \$3,116.43. In addition, Dell Telephone was required to pay advance administrative charges amounting to fifteen hundred dollars and post-permit administrative charges of six hundred dollars. The five-year rental fee will be \$5,810.00 which includes a discount for payments made four years in advance. The total cost in five years to cross the BLM land will be \$10,426.00. The permits were needed to provide service to eight subscribers. The total local revenue from these subscribers over the five-year term of the permits will be \$8,640.00. Without calculating the other costs of providing telephone service to these customers -- costs such as line repair, installation and rental of the phone units, the actual cost of operating the system -- the co-op will lose \$1,786.00 on these customers over the five-year period.

There are 25 more families in Eddy and Otero Counties in New Mexico who do not have telephones. Ordinarily, Dell Telephone would have considered acquisition of this territory in order to serve these families. However, providing telephone service to these people would require crossing additional Federal lands. Given the present policies of the BLM and the FS, it would not be feasible for Dell Cooperative to attempt to serve those families.

The situation at the Range Telephone Cooperative is a little more complicated in that the federal government is both a customer of the cooperative as well as a landowner charging for easements across its

land. The area in question is the Custer National Forest in Montana. The Range Telephone Cooperative has 23 private lines serving the forest's fire lookout towers and the Custer National Forest employees. The cooperative also has 80 private lines that serve other subscribers within the boundary of the Custer National Forest. The easement fee charged by the Forest Service is \$38,400.00, payable over a twenty-year period. This figures out to \$1,920.00 per year, or \$160.00 per month.

The Range Telephone Cooperative's Board of Directors, angered by the assessment, are paying under protest. However, they have decided that the Forest Service, as customers, should pay for the additional costs to the cooperative, and are charging the Forest Service an additional \$160.00 per month in their phone bill. The Forest Service, angered by the increased phone bill, is paying the \$160.00 under protest, but it does not want to jeopardize service to their fire towers.

These two entities should not find themselves in such a standoff. The benefit to the Custer National Forest in the form of telephone service is a classic example of the success of the REA program and it is difficult to find fault with the reaction of the Range Cooperative. Except in the case of Forest Service, the co-op does not find that its subscribers are on one hand grateful to receive service and on the other hand increasing the costs and difficulties of providing such service.

However, NTCA's support for S. 508 is not based primarily on the need to correct the special problems such as those cited in the cases of the Dell and Range Cooperatives. We are much more concerned with the precedent that is established if these federal policies of charging for easements is not reversed. Our members presently do not pay uniform

easement fees to other landowners such as states, counties, municipalities or private citizens. If those landowners adopt policies similar to the federal government's, the cost of providing service to rural areas will increase dramatically. While it is very difficult at this time to determine the exact costs that would result from paying easements to all landowners, a sampling of our member systems has revealed that the costs would be substantial. For example, if the federal easements formula were applied to other landholders, the Dell Telephone Cooperative would have to pay an additional \$11,420.00 per year to cross municipal or county owned land. The Golden West Telephone Cooperative in Wall, South Dakota under similar circumstances would have to pay an additional \$500.00 per year to cross state owned land, and the West River Cooperative Telephone Company in Bison, South Dakota estimates that its total payments for easements would total approximately \$30,385.00.

SUMMARY

The position of NTCA is one of strong support for S. 508. Charging REA borrowers for easements across federal lands is not consistent with the goals of the REA program, and this inconsistency should be resolved in favor of service to rural telephone and electric consumers.

It is particularly inappropriate to charge these fees at a time when the rural telephone industry is entering a period of great uncertainty. The restructuring of the Bell system, coupled with a variety of regulatory decisions, is going to have a dramatic impact on universal telephone service and it is not appropriate at this time to add to costs of rural telephone systems.

This federal policy of assessing easement fees also establishes a precedent for other land owners to follow in charging fees for rights-of-way. Such a precedent would only make it more costly to do the difficult job of bringing electric and telephone service to rural



Clay Electric Cooperative, Inc.

P. O. Box 308
 Keystone Heights, Florida 32656
 Telephone 904 - 473 - 4911

June 24, 1983

Mr. Charles Robinson
 Deputy General Manager
 NRECA
 1800 Massachusetts Avenue, N.W.
 Washington, D.C. 20036

Dear Mr. Robinson:

Furnished with this letter is a copy of county maps showing the Ocala National Forest and the Osceola National Forest, an amendment for Special Use Permit Ref: FMS2714, and a copy of bills rendered by the USDA Forest Service.

The county maps show the land area of the Ocala National Forest and the Osceola National Forest.

The amendment for special use permit shows the number of miles of line, number of acres, cost per acre, the total charge, and an explanation of Amendment 44.

We received two bills from the USDA Forest Service in December 1982. One for Clay Electric's distribuion lines of \$21,982.53 and one for the transmission lines of \$3,377.23. These bills are the first bills ever received from the U.S. Forest Service for the permits issued to Clay Electric Cooperative. Payment was due on January 1, 1983. A late charge has been added each month. 177.31 mi

Clay Electric Cooperative does not pay for distribution line easements or permits. Part of the requirements for electric service to our members is that all distribution easements or permits must be furnished by the land owners.

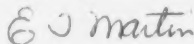
"Personalized Electric Service"

Mr. Charles Robinson
June 24, 1983
page 2

Clay Electric Cooperative's distribution lines serve approximately eight-thousand members in the Ocala and Osceola National Forests. A large number of the members have hunting camps or weekend places, which are low revenue producing accounts and must be subsidized by other members. Adding a permit fee would add to the cost of electric service to the rural people of North Central Florida.

We are also concerned that large land owners, such as paper companies, will use the U.S. Forest Service billing as a precedent to charge a yearly fee to cross their lands. This practice could lead to higher and higher electric bills to the people of this area.

Sincerely yours,



E.T. Martin
General Manager

/mt

Enclosures

RECEIVED DEC 5 1982

United States Department of Agriculture Forest Service AMENDMENT FOR SPECIAL USE PERMIT Ref: FSM 2714	a. Record no. (1-2)	b. Region (3-4)	c. Forest (5-6)
	70	08	05
THIS AMENDMENT IS ATTACHED TO AND MADE A PART OF THE ☐ TERM ☒ ANNUAL PERMIT	d. District (7-8)	e. User number (9-12)	f. Kind of use (13-12)
	05	4020	812
	g. State (16-17)	h. County (18-20)	i. Cord no. (21)
	12	083	1

For Power line Right-of-Way issued to _____
 _____ Clay Electric Cooperative, Inc. _____, On 5/3/66
(NAME OF PERMITTEE) (DATE OF PERMIT)

which is hereby amended as follows:

AMENDMENT NO. 44

This permit is hereby amended to provide for an annual land use charge in accordance with the regulations as published in the Federal Register, June 6, 1980. The charge for this use will be five (5) percent of the fair market value of the land involved. The effective date of this amendment is January 1, 1983.

Charges for this use may be made or readjusted whenever necessary to place the charges on a basis commensurate with the value of use authorized by this permit.

CUMULATIVE TOTALS: MILES, ACRES BY ROW WIDTHS (10'-30')

	<u>Miles</u>	<u>'Acres</u>	<u>Cost/Acre</u>	<u>Total Charge</u>
TOTAL THRU AMENDMENT NO. 43				
Osceola Ranger District	4.06	9.84	26.00	255.84
Lake George Ranger District	111.49	301.70	45.70	13,787.69
Seminole Ranger District	<u>61.76</u>	<u>173.72</u>	45.70	<u>7,939.00</u>
TOTALS	177.31	485.26		21,982.53

ALL OTHER CLAUSES AND CONDITIONS OF THIS PERMIT REMAIN IN EFFECT AND UNCHANGED.

This Amendment is accepted subject to the conditions set forth herein, and to conditions _____ to
 _____ attached hereto and made a part of this Amendment.

PERMITTEE	NAME OF PERMITTEE	SIGNATURE OF AUTHORIZED OFFICER	DATE
		TITLE	
ISSUING OFFICER	NAME AND SIGNATURE	TITLE	DATE
	DON PERCIVAL	Forest Supervisor	

FOREST SERVICE BILL FOR COLLECTION (Ref. FSM 6530)				1. Place of Issue TALLAHASSEE, FL		
Please pay by money order, bank draft, or check payable to FOREST SERVICE, USDA. Mail payment with this statement in the enclosed envelope BOX 13549 to: UNIT COLLECTION OFFICER, FOREST SERVICE, TALLAHASSEE, FL 32308				2. Date of Issue APRIL 5, 1983		
Clay Electric Cooperative Inc. P.O. Box 308 Keystone Heights, FL 32656 Please Show Any Change Of Address Below:						
3. Date of Period		4. Description			5. Amount	
01/01/83 to 12/31/83		Special Use Permit 70 08 05 4020 12/07/70 04 115 - KV Transmission Line				
		ANNUAL FEE \$3,377.23			\$3,377.23	
		LATE CHARGE \$33.77x3 \$ 101.31			\$ 101.31	
		TOTAL DUE \$3,444.77				
NOTE: Payments not received by the due date are subject to a LATE PAYMENT CHARGE at the rate currently published by the Department of the Treasury unless a different rate is prescribed by contract or agreement.				6. Date Payment Due Upon Receipt	7. Amount Due \$3,444.77	
8. Bill Number		9. Unit Number TT-05		10. Sub-Unit Number		
12. Remarks		11. Timber Sale Contract Number				
		13. FOREST SERVICE ACCOUNTING DATA				
		TRANS. CODE	MANAGEMENT CODE	FY	OBJ CLASS MAJ. SUB.	AMOUNT
		A	898521			\$3,377.23
		A	899013			\$ 101.31
		14. TOTAL ➔			\$3,444.77	

Senator WALLOP. The last panel consists of Ms. Abbie Berger, legal counsel for the Northern Gila County Historical Society in Phoenix, and Mr. David Curd, a representative from the Grand Canyon School District in Arizona.

STATEMENT OF ABIGAIL CARSON BERGER, LEGAL COUNSEL FOR THE NORTHERN GILA COUNTY HISTORICAL SOCIETY, PHOENIX, ARIZ.

Ms. BERGER. Thank you very much for allowing me to be here today. I will not reread the testimony that I have already submitted but rather I will summarize it and make myself available for any questions that you might have.

As Senator DeConcini so well put it, what we are trying to do here is establish a cooperative effort between the Forest Service and the citizens of the town of Payson and my client, the Northern Gila County Historical Society, to put into good shape the old ranger station and build a new building which would have both old ranger artifacts—I guess is what you would call them if they were used in 1908—and also some—a number of Indian artifacts and other items which the town of Payson has gathered but currently has no place to display.

The town and the historical society have looked at a number of sites and the site—and decided that the ranger station is the most appropriate due to the historical linkage between the Forest Service and the town.

If you have any questions regarding the bill I would be happy to answer it.

Senator WALLOP. No. I think that does not seem to generate a high level of controversy here. Most people seem to perceive the value of the program and I do not anticipate a whole lot of subcommittee trauma with it.

I appreciate your coming over.

Ms. BERGER. Thank you very much.

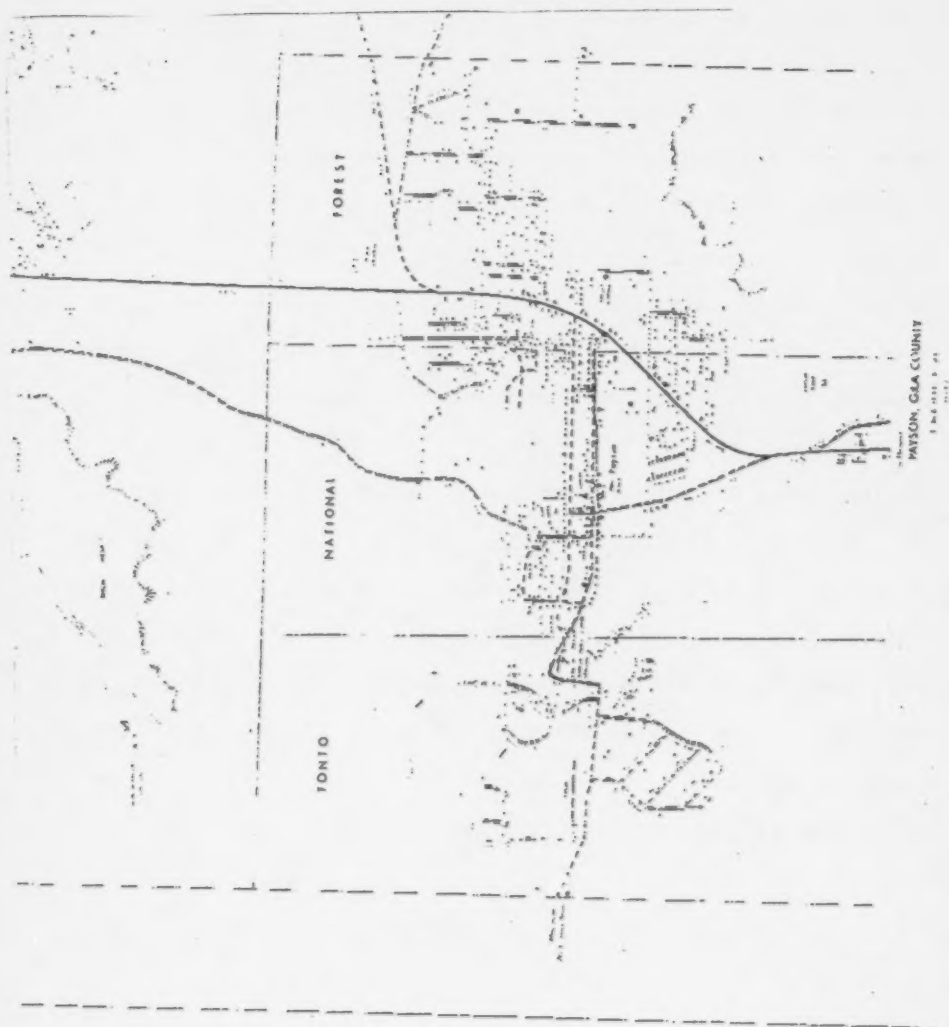
[The prepared statement of Ms. Berger follows:]

TESTIMONY PRESENTED TO THE PUBLIC LANDS SUBCOMMITTEE
OF THE UNITED STATES SENATE ENERGY AND NATURAL RESOURCES
COMMITTEE BY ABIGAIL CARSON BERGER OF PHOENIX, ARIZONA
ON JUNE 27, 1983

Mr. Chairman, Members of the Subcommittee:

My name is Abigail Carson Berger. I am an attorney with the firm of Ryley, Carlock & Ralston in Phoenix, Arizona. I appreciate your allowing me to appear before you today in support of Senate Bill 598. Our firm represents the Northern Gila County Historical Society, which is a non-profit corporation formed in 1976 for the purpose of discovering and memorializing the history of the Northern section of Gila County, Arizona. Gila County is located in the central part of the State of Arizona, East and North of the Phoenix metropolitan area. The majority of the Northern part of the County is included in the Tonto National Forest. The Town of Payson itself is surrounded by National Forest and its past and present are closely tied to Forest Service activities. The Bill before you would authorize the transfer of Payson's first ranger station and residence built in 1908, and a small amount of land which surround them to the Town of Payson. The purpose of this conveyance would be to allow the Town to lease the site to the Northern Gila County Historical Society so that its members could restore the old buildings and use the property as a museum for the preservation

and display of historical materials, such as Indian artifacts, old ranger equipment and pioneer farming equipment. The land itself has not been used as a ranger station or residence for some time, since a new ranger station and residence have been built to the East of the Town. The land lies along Main Street, in the center of the Town. The Society would like to stress their public purposes with regard to the proposed use of the property. They also would like to emphasize that the proposed conveyance would not deprive the federal government of any property which is either currently in use and useful to the operation of the Forest Service. The conveyance will afford an opportunity for the Town and its citizens to work closely with the Forest Service in restoring the buildings and artifacts, an opportunity which all look forward to. I have brought along a map which depicts the site of the ranger station for your review. I will be happy to answer any questions which you might have for me about the project. Thank you for your time.



Senator WALLOP. Mr. Curd.

**STATEMENT OF DAVID W. CURD, TEACHER, GRAND CANYON
UNIFIED SCHOOL DISTRICT NO. 4, GRAND CANYON, ARIZ.**

Mr. CURD. Thank you, Mr. Chairman, for the opportunity to comment on S. 600. I prepared a statement for the record and will therefore be very brief.

This bill is not precedent setting and is patterned after 16 U.S.C. 40 (a), (b), and (c) which provides for fees from visitors to Yellowstone National Park to be set aside for the operation and maintenance of school facilities and educational services.

The Grand Canyon only requests funds for the maintenance and operation of the school facility. The Grand Canyon has made numerous efforts in the last few years to obtain funding to repair the deteriorating school facilities owned by the Department of the Interior.

As of July 1, 1983, the Grand Canyon budgeted all of its available levy funds for emergency repairs. No levy funds remain for any capital improvements despite many immediate and pressing needs.

An architect's description of the deplorable and unsafe condition of the building is attached as well as a State fire marshal's report which points out hazardous fire code violations.

Within the last year there has been an electrical fire. Steampipes in the library ceiling have broken. The heating system continually breaks down. There is no ventilation system in the science or industrialized classrooms and none of the buildings are accessible to the handicapped.

Numerous safety reports, inspection reports, are available from the National Park Service. On the educational side, due to the State revenue control limit, the Grand Canyon reduced its maintenance and operation budget from \$833,000 to \$713,000.

As a result, the Grand Canyon made a drastic reduction in force, cutting from its staff physical education, home economics, remedial reading, and reduced art, music, and counseling and half-time positions; eliminated both teacher aides and 1½ other classified positions.

Educational supplies were reduced from \$26,000 to \$10,000. The Grand Canyon anticipates further reductions in force next year as the maintenance operation budget should be approximately \$630,000.

The Grand Canyon has the support of the business community which pays, in spite of impact aid, one of the highest tax rates in the State: \$4.98 per \$100 assessed valuation on, for the most part, leasehold interests, as the Federal Government owns the real property.

Mr. Chairman, the Grand Canyon receives tremendous support from Grand Canyon National Park Superintendent Dick Marx and his staff to improve not only the safety of the children but also support to improve the quality of the education of the students.

Mr. Chairman, this concludes my statement and I would like to answer any questions that the Senator or members of the committee may have at this time.

Thank you.

[The prepared statement of Mr. Curd follows:]

Grand Canyon Unified Schools

DISTRICT NO. 4
P. O. BOX 519

Grand Canyon, Arizona 86023

Telephone: 638-2461 & 638-2462
Area Code: 602

STATEMENT OF DAVID W. CURD
TEACHER, GRAND CANYON UNIFIED SCHOOL DISTRICT #4
BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER,
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
JUNE 27, 1983

Mr. Chairman, thank you for the opportunity to comment on S600.

I have prepared a statement for the record and will therefore be brief.

This bill is not precedent setting and is patterned after 16 USC 40 a,b,c which provides for fees from visitors to Yellowstone National Park to be set aside for the operation of school facilities and educational services. Grand Canyon only requests funds for the maintenance and operation of school facilities. Grand Canyon has made numerous efforts in the last few years to obtain funding to repair the deteriorating school facilities owned by the Department of the Interior. As of July 1, 1983, Grand Canyon budgeted all of its available levy funds for emergency repairs. No levy funds remain for any capital improvements despite many immediate and pressing needs. An architect's description of the deplorable and unsafe condition of the buildings is attached as well as the State Fire Marshall's report which points out hazardous fire code violations.

Within the last year there has been an electrical fire, steam pipes have broken, the heating system continually breaks down, there is no ventilation system in the science or industrial arts classrooms, and none of the buildings are accessible to the handicapped. Numerous safety inspection reports are available from the National Park Service.

On the educational side due to the state revenue control limit, Grand Canyon reduced its Maintenance and Operation Budget from \$833,000 to \$713,000.

As a result Grand Canyon made a drastic reduction in force, cutting from its staff physical education, home economics, remedial reading, and reduced art, music, and counseling to half time positions, eliminated both teacher aids, and one and one-half other classified positions. Educational supplies were reduced from \$26,000 to \$10,000. Grand Canyon anticipates further reductions in force next year as the Maintenance and Operation budget should be approximately \$630,000.

Grand Canyon has the support of the business community which pays, inspite of Impact Aid, one of the highest tax roles in the state (\$4.98 per \$100.00 assessed valuation) on, for the most part, leasehold interests as the federal government owns the real property.

Mr. Chairman, Grand Canyon receives tremendous support from Grand Canyon National Park Superintendent, Dick Marks and his staff to improve not only the safety of the children but also support to improve the quality of the education of the students. Mr. Chairman, this concludes my statement. I would like to answer any questions the Chairman or the Members may have at this time.

Thank you.

Senator WALLOP. Thank you, Mr. Curd. What do you make of Director Dickenson's commitment?

Mr. CURD. I asked him when he told me what he was going to propose, I said when can we get the check. The facilities need to be fixed immediately, sir, and if that sort of aid were in fact available we would absolutely support it.

It is scary. I was there the day the school—there was an electrical fire in the high school and luckily it was at 4:30 because I was still there. If it had been at 5:30, you would be building a whole brandnew building in that situation.

Senator WALLOP. Are you principal of the school?

Mr. CURD. No, sir; I teach there.

Senator WALLOP. Teacher?

Mr. CURD. Yes, sir.

Senator WALLOP. Well, at least for the immediate that may be the quickest if we can get them to continue the direction that they had stated. That would give us a little elbowroom.

Mr. CURD. Yes, sir.

Senator WALLOP. Bits of legislation like this just don't seem to fly with any great speed. If I recall, this is not the first time I have seen this.

Mr. CURD. No, sir.

Senator WALLOP. We may, at least with your permission, press them on that commitment as quickly as we can.

Mr. CURD. I would certainly appreciate any assistance the committee could provide us on that matter. We have made applications umpteen times to the Department of Education for impact aid, construction money.

We fall under all the rules and all the programs' exceptions because we are the only one and we really do need some help.

Senator WALLOP. I appreciate your coming here and certainly I am sympathetic of the problems that have been described by you and Senator DeConcini and Senator Goldwater.

We will, I think, do one thing first which is press them to do what they can do and have available to do, because that would at least provide you some horizon while we are working on this proposal.

Thank you very much.

Mr. CURD. Thank you.

Senator WALLOP. That appears to be all the information we can gather up this morning, batted, tossed about or otherwise delivered, so the subcommittee stands adjourned.

[Whereupon, at 11:10 a.m., the hearing was adjourned.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD



ELMORE COUNTY

COMMISSIONERS
M. A. RIDDLE
MOUNTAIN HOME 587-3898
W. W. SANDERS
MOUNTAIN HOME 587-4841
JOHN SHREVE
GLENNS FERRY 366-7334

ELMORE COUNTY COURTHOUSE
150 SOUTH 4TH EAST
MOUNTAIN HOME, IDAHO 83647 PHONE 587-7272

June 22, 1983

Hon. Malcolm Wallop, Chairman
Public Lands and Reserved Water Subcommittee
United States Senate
Washington, D. C. 20510

Dear Senator Wallop:

The Board of Commissioners of Elmore County, Idaho, supports the bill, S. 482, to reinstate the desert entries at Sailor Creek and Black Mesa. Elmore County has been furnishing governmental services to the land in these projects for nearly 20 years, without any property tax support, and it is important to the county and its property taxpayers and other local units of government to have these lands patented so that they can be placed on the tax rolls.

When the Sailor Creek entries were first started, in 1964, the county agreed to build a new bridge across the Snake River in order to furnish access for the large farm trucks that hauled supplies to the project and hauled farm produce from the project. The Sailor Creek entries made a contribution to the cost of the bridge, but the bulk of the cost was borne by the county and by the Glenns Ferry Highway District. We never have received the tax revenue that we felt the county and the Highway District were

PERTINENT FACTS ABOUT ELMORE COUNTY
Created 1889 Comprises 2052 square miles Elevation (Mountain Home) 5148
POINTS OF INTEREST
Mountain Home Air Force Base, Idaho's Only Military Installation - Anderson Ranch Dam -
C. J. Nickle Dam - Bliss Dam - Arrow Rock Dam - Trinity Lakes - Eureka Lava Caves -
Three Island State Park



entitled to receive to help pay the cost of that bridge.

Many businesses in Elmore County depend on these farming projects for a substantial part of their income. The town of Glenns Ferry went through a serious local depression several years ago when the Union Pacific Railroad eliminated its crew base in Glenns Ferry. Some of the local merchants already have experienced a decrease in volume because Black Mesa has gone out of operation. We sincerely believe that closing down Sailor Creek would have a serious adverse effect on the economy of Glenns Ferry and Elmore County.

The Glenns Ferry Highway District has invested large sums of money in improving the roads that serve both of these projects. Although the highway district does get some revenue from motor fuels taxes generated on these projects, it still does not receive any property tax from the land in the entries, and that portion of the cost of the road improvements has been carried by the other property taxpayers in the highway district.

The Glenns Ferry School District is required by law to furnish instruction for the children of the people who live or work on these projects. Yet the school district, like the other

local units, receives no property tax revenue from the land at Sailor Creek or Black Mesa. Placing these lands on the tax rolls would improve the tax base of the school district and the other local units.

Those of us on the Board of Commissioners have followed these projects very closely from their inception back in the early 1960's. We were pleased to see the capable manner in which both projects were developed, and felt that the projects would be solid additions to the economic vitality of Elmore County and the local communities. We have never really understood why the Bureau of Land Management thought it had to change its policy on desert entries or why the patents were not issued on these entries.

Since the farming operations were discontinued at the end of the 1981 season, most of the land at Black Mesa has become infested with weeds, which will be spread by wind and livestock to other farms in the area. We would hate to see the same thing happen to the land at Sailor Creek.

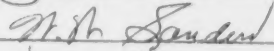
In closing, it is important to our county that the lands at Sailor Creek and at Black Mesa take their rightful place as part of the economic and tax bases of the county. We earnestly urge

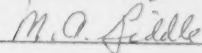
your favorable action on S. 482, so that purpose may be accomplished.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
ELMORE COUNTY







THE CITY OF GLENN'S FERRY

MAYOR
E. Dayle Messerly

CLERK
Eddie H. Bostic



BOX R, GLENN'S FERRY, ID 83623

June 22, 1983

COUNCIL
Jessie B. Fleming
Larry E. Rose
Dora Mae Sellers
Bobby Whitlock

Senator Malcom Wallop, Chairman
Public Lands & Reserved Water Subcommittee
United States Senate
Washington, D. C. 20510

Dear Senator Wallop:

I'm writing this letter in support of Senate Bill #482 which I feel would provide relief for the desert land entrymen on the Sailor Creek and Black Mesa Projects. We feel that the way the economy is and with the tax burden on the public that helps support our state, county, school district and city, this would be a partial relief of those tax burdens of the State of Idaho.

I feel very supportive having these entrymen meet the cultivation and irrigation requirements of the Desert Land Act and to submit final proof so that these lands could be placed on the tax roll of Elmore County and take some of the tax burden off the tax payers of our county.

Hoping that you and your committee can see fit to support Senator McClure's and Senator Symms' Senate Bill #482 to the reinstatement of the entries and provide relief for the desert entrymen of the two projects.

Sincerely,

E. Dayle Messerly
Mayor

EDM/pk

HOME OF THE THREE ISLAND CROSSING STATE PARK



June 20, 1993

The Honorable Malcolm Wallop, Chairman
Public Lands and Reserved Water Subcommittee
United States Senate
Washington, D.C. 20510

Dear Senator Wallop:

The Glenns Ferry Chamber of Commerce over the years has endured much hardship and pain with the pull out of the Union Pacific Railroad Roundhouse, the loss of Indian Hills Farm Project and the uncertainty of Black Mesa Farm Project.

It is our understanding that in the near future a decision will be made concerning the Sailor Creek Farm Project. The Chamber wishes to express its concern over the possible loss of 24 full-time jobs and 126 part-time jobs and a payroll of \$1,500,000 a year. This loss could devastate our community and surrounding areas.

Companies such as Hancey Seed, Mart-grain, and Redi-Soud depend upon the farm products grown by projects such as Sailor Creek. Hancey Seed Company, with over 8,000 acres of beans contracted locally, would lose 2,000 acres of contracted beans if Sailor Creek Project was lost.

Please do everything possible to insure that this project land is turned over to those entrymen filing and making improvements on the land.

Sincerely,

Liz Cluch, President
Glenns Ferry Chamber of Commerce

HANEY SEED CO., Inc.

BEANS - PEAS - GRAIN

Box 119 : : Phone 366-2441

GLENN'S FERRY, IDAHO 83623

June 21, 1983

Senator Malcolm Wallop
Chairman
Public Lands and Reserved Water Subcommittee
United States Senate
Washington, D.C. 20510

Dear Senator Wallop:

I am writing to you in support of Bill S.482, which is an upcoming issue before the Public Lands Subcommittee of the United States Energy and Natural Resources Committee. The purpose of this Bill is to re-instate the entries, filed by the original entrymen under the Desert Land Act, on the Sailor Creek and Black Mesa farm projects. I would like to express my feelings from a business standpoint, as well as from a personal point of view.

In 1973, Haney Seed Company of Twin Falls, Idaho, was considering expansion. They selected the Glenns Ferry area primarily because of the potential for expansion of farm lands through the Desert Land Act, and because of the present existence of the Sailor Creek and Black Mesa projects. Our administration was aware that the Black Mesa project was under scrutiny, but felt the matter would be favorably resolved. There were no questions surrounding the validity of the filings of the Sailor Creek project at that time.

The Company has since invested in excess of \$3,000,000 towards the purchase of buildings and equipment suitable to handle the anticipated volume of dry beans and wheat, we expected to receive. This investment soon proved to be well founded, as Haney Seed grew to become one of Glenns Ferry's largest employers, as well as one of the State of Idaho's largest bean warehouses.

Because of this success, we were able to garner commitments from large canneries (ie. Hormel, Stokely Van Camp, etc). This has been good for not only Haney Seed and the farmers on Sailor Creek and Black Mesa, but all growers we have. Farmers in our area now have a place locally

HANEY SEED CO., Inc.

BEANS - PEAS - GRAIN

Box 119 : : Phone 366-2441

GLENNS FERRY, IDAHO 83623

to market their crops. In the past they have had to drive a minimum of 30 miles to take their crops to market. I believe that other companies interested in expansion in this area, may be somewhat reluctant to enter into this area partially because of the discontinuation of these projects.

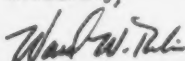
Looking through past records, it is easily seen that the crops produced in the past 9 to 10 years on the Sailor Creek and Black Mesa projects, account for between 25% and 60% of the total volume of all commodities handled by our company in Glenns Ferry. This year we especially rely on the Sailor Creek project, as they have planted nearly 75% of the total acreage of beans planted in this area. Without them, our existence here, would be under severe scrutiny.

Due to a temporary nation-wide oversupply of dried beans, and with crop prices being near an all-time low, convincing farmers to plant beans was extremely hard to do. As a result of this, we were, and still are, forced to lay off personnel, as well as curb our expenditures wherever possible. If it weren't for the Sailor Creek project, we would very likely cut our staff down to 2 or 3 people. This would be quite a cut from a one time seasonal personnel roster of over 65 employees.

The grocery stores, tire stores, in fact every business in Glenns Ferry, greatly depends on these projects to maintain their continued existence. The discontinuation of these projects, will have, and already has had, a dramatic effect on almost every individual in the community, either by direct employment, or as a result of a related economic condition. The City of Glenns Ferry was a railroad town 20 years ago, and a major portion of the community relied upon it for livelihood. The railroad downgraded their services quite extensively, and there has been a transition in the community towards agriculture and agribusiness, to a point where we are now basically a farm community.

It is with these factors in mind that I write to you, both as a business person, and as a life-long resident of Glenns Ferry. Please accept this input when Bill S.482 comes up for consideration.

Sincerely,



Ward W. Rulien
Plant Manager

Joint School District 192

Administrative Offices
Glenns Ferry, Idaho 83623

June 20, 1983

The Honorable Malcolm Wallop, Chairman
Public Lands and Reserved Water Subcommittee
United States Senate
Washington, D.C. 20510

Dear Senator Wallop:

The Glenns Ferry Joint School District #192 hereby requests your serious consideration of insuring that Sailor Creek Farm Project be turned over to the entrymen that have filed and improved upon the land.

Glenns Ferry School District #192 would be hurt drastically if Sailor Creek Project was to be treated in the same manner as Indian Hills Farm Project whereby it was turned back into desert land.

The economy of our area and the number of students attending our school could be reduced significantly enough to cause irreparable damage.

Please do as much as possible to help keep our school and community from experiencing the harmful repercussions that could occur from losing as important of project as the Sailor Creek Farm Project.

Sincerely,

James C. Reed

James C. Reed
Superintendent of Schools

Mountain Home Chamber of Commerce

Mtn. Home Chamber of Commerce
 110 North 3rd East
 Mtn. Home, ID. 83647
 MOUNTAIN HOME, IDAHO

June 23, 1983

Senator Malcolm Wallop, Chairman
 Public Lands and Reserved Water Subcommittee
 United States Senate
 Washington, D. C. 20510

Honorable Senator Wallop,

The Mountain Home Chamber of Commerce is in support of the efforts to reinstate and provide relief for the desert land entrymen in the Sailor Creek and Black Mesa projects.

For the past 20 years these projects have not been on the tax rolls of the county and yet there has been tremendous expenses involved in bridge and road construction and maintenance that through necessity has been passed on to other taxpayers.

These projects, when in full capacity do have a considerable impact on the economy of Mountain Home and Elmore County. They create a lot of year round and seasonal jobs that provide employment and income to a segment of our unskilled population that is difficult to provide otherwise. This in turn reflects on the volume of the grocery stores, clothing stores and hardware establishments. There can be a tremendous impact on the farm implement store and oil distributors.

We ask for your favorable action on Senate Bill 482 to allow the entrymen of Sailor Creek and Black Mesa to complete the requirements on these entries.

Sincerely,

Joe W. Terrell
 Joe W. Terrell, Executive Director

Don Graham, President

You Too Can Be a Chamber Member

26-775 320

June 20, 1983

The Honorable Malcolm Wallop, Chairman
Public Lands and Reserved Water Subcommittee
United States Senate
Washington, D.C. 20510

Dear Senator Wallop:

The merchants of the city of Glens Ferry respectfully request your serious consideration in the matter of awarding the land known as Sailor Creek Project in Glens Ferry, Idaho to those entrymen that have filed and improved upon the land over the period of years.

Merchants in Glens Ferry and the surrounding communities would be devastated by the loss of this project. Sailor Creek's \$125,000 a month payroll and 24 full-time employees and 126 part-time employees have enormous impact on the welfare of the community.

The following Glens Ferry merchants request you allow Sailor Creek Farm Project land to be turned over to the entrymen that have filed and improved upon the land over the years:

Sincerely

Liz Gluck Real Estate - Liz Gluck
Bob Jonasson Tree - Bob Jonasson
Prickles Gas - Felice Stefford
Shum 174 57 Co. - Russ J. Shum
Goodman Out & Sell
by Shum
K Blank - K Blank Agency, Inc.
R. J. Russell Delo
Karen Hobb (To-Go)
Peggy Watson - Lew Hobb
Paul J. Ke. S. Idaho State Bank

Starlite Lounge Carol Phillips
 Vicaril Tavern Sam Mason
 of Marie Post - The Clarks Tree
 Coast To Coast Larry E Rose
 Haystacks Cafe & Motel J. H. Thapen Crane
 Handline Drivage by M. H. H. H.
 South E. Road - Locking
 Pioneer Hardware R. H. H. H.
 Diamond Laundry Ken King
 Carole's Beauty Boutique Charles H. H. H.
 Pioneer Federal Credit Union Howard H. H. H.
 Oving Inc. W. B. H. Southside Market Thomas H. H. H.
 Margaret Parker - Country Corner
 Owen's Carpet Cleaning Tom D. H. H.
 Glenn's Electric - Jerry Bybee
 Diana Hooley - Times News Reporter
 Corner Mart - C. W. H. H.

Route #8, Box 213
Caldwell, Idaho 83605
June 21, 1983

Senator Malcolm Wallop, Chairman
United States Subcommittee on
Public Lands and Reserved Waters
Washington, D.C. 20510

Re: Hearing on S. 482 on June 27, 1983

Dear Senator Wallop:

Although the attached letter was written to Senator Church at an early date in response to Brief of Contestant filed on December 14, 1968, it was not mailed. However, the observations made at that time will still convey my personal feelings as one of the "entrymen" involved as I now wish to indicate my support of Senate Bill No. 482.

At the time our entry was approved in 1964, our two sons were of an age and a time in their life when they would have joined in the farming operations and we all looked forward to the development of a "family farm." This would have been an especially rewarding experience to us as the dry, brushy, rough and rocky land turned into green and productive farm land. From the initial enthusiasm, our feelings during the last nineteen years have alternated between hope and despair. The attached letter was written when emotions were high and the accusations and "put-downs" of the hearing, in which we were all questioned and testified individually, were still painfully remembered.

With the passage of time, perhaps we might be expected to give up in resignation. That is not the case. Perhaps, even to a greater extent, we feel that the Government has not honestly fulfilled its obligations. We believe that the Subcommittee on Public Lands and Reserved Waters, with you, Senator Wallop, as Chairman, will understand this and urge the support and passage of Senate Bill 482.

Your help, understanding and consideration will be appreciated by us all.

Respectfully submitted,

Peggy Melsen
PEGGY MELSEN
Idaho 014252

Route #3
Caldwell, Idaho 83605
January 5, 1969

Senator Frank Church
United States Senate Office Bldg.
Washington, D.C.

Re: Desert Land Entries
Idaho 013820 et al

Dear Senator Church:

Some of the conclusions in the Brief of Contestant filed December 14, 1968 listed under "Facts" are based on imagination, wholesale categorization and biased exaggeration, and tend to discredit the intelligence, question the judgment and to maliciously misconstrue the intent of the entrymen. This deliberate attack on the very character of the contestees is humiliating, insulting and unsupported by truth. The contestor has not support his "facts" with legal evidence, but has relied heavily on what he thinks the intent, thoughts and plans of the contestees were. Although the time lapse was great, the legal documents and coverage extensive, the Government tactics frustrating and confusing, the entrymen were labeled stupid, dishonest and as having acted in bad faith--this because they failed in many instances to remember conversations, details of document signings, and minutes of meetings. They were not only accused of being "dummies for the promoters," but also "dumb dummies," a most malevolent accusation.

The following statements from the brief filed by the Contestant show examples of such distortion of truth:

"Morris and Noble enjoyed a special relationship with the entrymen This is the reason"

Certainly it is true that such a special relationship did exist in some instances, and in view of the "fact" it seems reasonable that a valid consequence would be the desire to enhance that special relationship by helping these "friends and relatives" to acquire land which they believed (as good farmers and businessmen) would subsequently greatly benefit them. It would, it seems to me, show an unreasonable distrust of ones' fellowmen to believe in the plot of control and exploitation that the Government maintains was a by-product of this "special relationship."

With regard to the statement, "The entrymen were persons who had no desire, ability or means" I submit that a "sad but true" result because of the great lapse of time since the

Senator Frank Church
January 5, 1969
Page - 2

entrymen first made their applications, age will, in some instances, be a factor in active participation of the actual work involved; however, to say that none had the desire or ability is another obvious untruth. Several testified that they were experienced in farming, and in some instances there were younger sons who could help with the family farm. All who were asked testified that they could have negotiated loans or made individual financial arrangements had it been necessary. Anyone who had visited the site of the desert entries and had taken note of the rough, dry domain and the high lift for the water to reach the land, could not, in good faith, doubt that it would require financing or take a rich man, indeed, to reclaim and develop the land on a completely individual basis. It seems unfair to penalize a man for not being rich.

The Contestant listed the entrymen as: "Six housewives, one minister, one banker, one attorney-dairy farmer, one secretary, one farmer. One of the promoters was also an entryman." He failed to state that several held or had previously held responsible positions in the city or county, several taught Sunday School or were active in church work and others held important and respected positions in their communities. Many had excellent educations, had been in business a long time and in direct contact and consultation with hundreds of people. It seems a little farfetched to believe that every one of these twelve people should be so irresponsible, uncaring, indiscreet, unwise and unlawful as to file applications for land they had "no intent to reclaim . . .," to "conceal and falsify true facts" and to "assign their entries to or for the benefit of a corporation."

The statement "that some testified they had made a few casual visits to the land . . ." is also misleading and does not take into consideration that "some" testified that they had made "many" trips to the land at all stages of development, had checked crops, sprinklers, etc. and were well aware of the conditions of their entries as to farming procedures and crops.

As I see it, the entrymen acted in most cases, with wisdom, good business sense and judgment in taking the necessary steps to procure their desert entries. They looked at the land and felt a desire to own some of their own. (I believe many of them felt an inherent "love of land" so glowingly described as being a personal prized possession of one of the Government attorneys) They realized the vast amount of work that needed to be done and could foresee a great expense. They picked to help them men they could trust as being honest, reliable, experienced and successful. If they seemed to rely heavily on

Senator Frank Church
January 5, 1969
Page - 3

the advice given them by these men, it must be remembered that they had legal and business representation and, I believe, were well equipped to judge the men who represented them.

If it becomes evident that these twelve entrymen have "dreamed the impossible dream," I am convinced legally and personally it will not be because they have failed in any way to act "in good faith," and it is to be hoped that their trust in a "Government of the people, by the people and for the people" will be renewed and the entries allowed.

Respectfully submitted,

P
PEGGY AXELSEN
Idaho 014252

June 21, 1983

Senator Malcolm Wallop, Chairman
United States Senate Subcommittee on
Public Lands and Reserved Waters
Washington, D.C. 20510

RE: Hearing S.482
June 27, 1983

Dear Sir,

We would prefer to be present at the Hearing and present our testimony in person, however, scheduling prevents that. In lieu of our presence, we are responding in this manner.

As Entrymen in this case, as well as private citizens, we are concerned and confused over the prior actions of which you have records and testimony. It is inconceivable that over twenty years have passed, and positive decisions have been rendered on our behalf on several occasions, and this matter still remains in question.

The August, 1964 Decision in the Indian Hills case seemed to clarify the situation and clearly indicated that this matter would be resolved in an expeditious manner. From that point on, the interpretation of the law seemed to change and we became victims of ex post facto application of the later legal interpretations.

Judge Anderson's ruling in 1976 in the United States District Court outlined certain requirements, to which, in good faith, all parties involved responded. Again, it was all for naught.

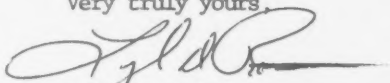
In both the general and specific sense it appears, that at all points we were led by the Government early on to believe that all arrangements for the developing and farming of these lands were acceptable, and it was years later that these arrangements were first called into question as being contrary to the Desert Land Act.

Therefore, we are coming to you now, as a member of the United States Senate, and Chairman of this committee, requesting your positive action on our behalf in this matter, asking that our Patents be issued in an expeditious manner. We feel it is grossly unfair to penalize us any longer for interpretations of law which were applied years after our good faith actions were taken.

Senator Malcolm Wallop
June 21, 1983
Page 2

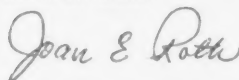
We will look forward to your response.

Very truly yours,



Lyle D. Roth

Joan E. Roth



LDR/el

cc: Mr. W.F. Ringert
Anderson, Kaufman and Clark
599 West Bannock Street
Boise, Idaho 83701

Glenns Ferry, Id

June 18, 1983

Senator Malcolm Wallop, Chairman
U.S. Senate Subcommittee on Public
Lands and Reserved Waters
Washington, D. C. 20510

Dear Senator Wallop:

We are writing you concerning
Bill S. 482, The bill to reinstate
our desert entries on the Black Mesa
and Sailor Creek Projects.

As far as we know all the
entrymen worked in good faith to
develop these projects. We had
no idea that the government
regarded those arrangements
contrary to the Desert Land Act,
until long after final proof
had been made on our
entries.

Many of us have our
life savings invested in

this project.

We would greatly appreciate
all you can do to help us regain
our land.

Special thanks to our
Congressmen from Idaho in
all the help they have been
to us also.

Thank you,

Sincerely

Murthan and Vannie Ellis



NATIONAL WILDLIFE FEDERATION

1412 Sixteenth Street, N.W., Washington, D.C. 20036

202-797-6800

August 12, 1983

The Honorable Malcolm Wallop, Chairman
Subcommittee on Public Lands and Reserved Water
U.S. Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The National Wildlife Federation submits this letter for inclusion in the record of the subcommittee's hearing of June 27, 1983 on S. 508. This bill is intended to exempt rural electric and telephone cooperatives from payment of fees charged by the Secretary of Agriculture and the Secretary of the Interior for the establishment of rights-of-way across National Forest System Land and public lands administered by the Bureau of Land Management.

The National Wildlife Federation is opposed to passage of this bill. Our primary concern is that a blanket waiver of permit fees would skew the siting of new rights-of-way toward public lands and away from privately-held lands.

S. 508 would constitute a public subsidy for private use of public land. Furthermore, it has not been demonstrated that the right of the Secretary, under FLPMA, to grant case-by-case fee exemptions to non-profit cooperatives is insufficient to safeguard the interests of rural customers. Fees charged to date have been relatively modest amounting in most cases to less than \$1,000 per year.

Thank you for the opportunity to present these views for the record.

Sincerely,

E. R. Osann

Edward R. Osann, Director
NWF Water Resources Program

cc: The Hon. Dale Bumpers

CUPPAD

REGIONAL COMMISSION

2415 14th Avenue South Escanaba, Michigan 49829
(906) 786-9234

CENTRAL UPPER PENINSULA PLANNING AND DEVELOPMENT REGIONAL COMMISSION

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July 11, 1983

The Honorable James A. McClure
Chairman
Committee on Energy & Natural Resources
United States Senate
Dirksen Senate Office Building
Washington, DC 20510

Dear Senator McClure:

This letter is a response to the June 27, 1983 statement of Russell E. Dickinson, Director, National Park Service, which opposes four of the five Provisions of S. 620.

Before getting into the specifics of Mr. Dickinson's statement, which I understand expresses the Administration's views, I would like to make some general observations.

This proposed legislation is really a culmination of more than five years of intensive efforts to put in place a plan for the Lakeshore. A plan that is in keeping with the intent of the authorizing legislation, yet responsive to contemporary problems and opportunities.

An effort that involved friends and neighbors of Pictured Rocks; citizens, local governments and state agencies as well as the National Park Service.

An effort that began with the organization in the spring of 1977 of a task force representing all of the groups and organizations interested in the Lakeshore. The task force spent 18 months studying the Lakeshore and formulating recommendations concerning the future of the Lakeshore.

An effort which included a complete revision of the Lakeshore General Management Plan which was published by the NPS in 1981.

An effort which in the past two years has attempted to find a workable solution to problems associated with the inland buffer zone.

The National Park Service's statement seemingly ignores these efforts, even though the National Park Service has been a full participant in all of them. It is as if none of them have taken place; that it is now 1976 and not 1983.

"Some men see things as they are and say WHY,
we dream things that never were and say WHY NOT."
— George Bernard Shaw



The Honorable James A. McClure
 July 11, 1983
Page 2

Let me be more specific.

For ease in comparison I will quote from the National Park Service's statement and then respond point by point.

"First, we do not support the authority to accept a transfer or donation of property for visitor information and administrative sites. There are visitor information and administrative facilities already within the boundary, and we do not propose an expansion of the area beyond the current boundary."

This provision was included to permit National Park Service participation in a joint visitor use facility with the United States Forest Service which administers the nearby Hiawatha National Forest. This is a potential which makes good sense given the geography of the area. The National Park Service, up until this point, thought so as well since the 1981 General Management Plan has this to say on P. 36:

"A joint Forest Service/National Park Service regional information center may be built south of Munising near the western end of Corridor B."

This location is outside the current boundary. Similarly, there is also a need for administrative facilities on the East end and it may very well make sense to place that facility in Grand Marais, perhaps in a Coast Guard station that may become surplus.

This provision would not require, but only permit these facilities to be outside the boundary.

"Second, we oppose the new provision requiring local governments to develop a land use plan and zoning regulations for the buffer zone, which must be approved by the Secretary of the Interior. Under the existing Section 12 the Secretary is authorized to assist and consult with local officials in establishing zoning bylaws, but not to approve them.

The only way the National Park Service can control land use in the inland buffer zone is to condemn property we believe is used in a manner detrimental to the purpose of the zone. As I stated earlier, we only have \$758,772 remaining unappropriated under the 1966 acquisition ceiling. To acquire all the land in the buffer zone would exceed this amount. We have no intention of requesting additional authority and funds to enforce local zoning. Federal condemnation is an ineffective way of enforcing local land use decisions. Alternatives other than federal condemnation must be considered in these situations."

Let me first point out that the provision in question is permissive rather than mandatory, i.e., local governments may, but are not required to, develop land use plans and zoning regulations for the buffer zone.

The Honorable James A. McClure
 July 11, 1983
 Page 3

The intent of this provision is to do exactly as the National Park Service statement suggests: find alternatives to federal condemnation. Under this provision the Secretary's authority to condemn would be limited to those instances where local regulations were insufficient to protect the Lakeshore.

Moreover, local property-owners could make reasonable use of their land without fear of condemnation as long as they complied with local zoning regulations. Under existing law property owners are in a kind of twilight zone with no guidelines as to which land uses are acceptable and which may trigger a condemnation action.

The provisions authorizing the Secretary to approve the locally developed land use plan and zoning regulations are nothing more than an attempt to provide a means of expression of the federal interest in the buffer zone. In return, the power of condemnation is limited as long as those regulations are enforced.

It should also be noted that the zoning regulations would be administered and enforced locally and not by the National Park Service.

"Fourth, we cannot support an increase in the development ceiling from \$6,348,000 to \$26,780,000. We will, however, budget for additional developments as priorities permit, and we will submit appropriate amendatory legislation to authorize appropriations for those items in the budget."

The estimated costs of implementation of the 1981 General Management Plan are \$23,687,000 (P. 61, GMP). Increasing the development ceiling to the level proposed is a needed expression of the federal government's commitment to develop the Lakeshore as it has indicated in the General Management Plan. It is fully understood that actual appropriations will only be made as priorities permit.

"Fifth, we cannot support the 5-year authorization of \$350,000 annually for improvement of non-federal roads. A special authorization such as this would not be necessary if the roads were transferred to the National Park Service, and we understand that a portion of the road mileage in the Lakeshore will be so transferred."

The National Park Service position on this provision is inconsistent with their expressed intention not to acquire lands in the inland buffer zone. Because of the configuration of the Lakeshore, access roads must traverse the inland buffer zone to reach the shoreline zone. But, these roads also provide access to private lands.

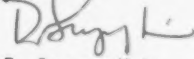
If the NPS has no intention of acquiring inland buffer zone lands, why would it want title to the roads? This appears to be another case of failure to acknowledge the great strides in federal-local relations that have been made in the past few years.

In addition, it should be understood that the original development plan envisioned an interior road network. The New General Management Plan deletes much of the interior road system, thereby placing much of the traffic burden on the local road system.

The Honorable James A. McClure
July 11, 1983
Page 4

In closing I would urge that the Subcommittee give favorable consideration to S. 620. Having been heavily involved for the past thirteen years in the effort to see the Pictured Rocks National Lakeshore become the national recreation treasure that Michigan's distinguished Senator, the late Phil Hart, dreamed it could be, we believe this bill to be a reasoned and reasonable approach to resolution of some difficult problems.

Sincerely,



D. Gregory Main
Executive Director

DGM/pk

STATEMENT BY JAMES T. MCINTYRE
BEFORE THE SENATE SUBCOMMITTEE ON
PUBLIC LANDS AND RESERVED WATER
IN SUPPORT OF S.807

Mr. Chairman and Members of the Subcommittee, it is a distinct honor for me to have this opportunity to appear before you in support of S.807. I would like to express my sincere appreciation to you for scheduling this timely hearing. In addition, I want to thank Senator Nunn and Senator Mattingly for their dedicated efforts to ensure that one of our most precious natural resources, Cumberland Island, is appropriately preserved for the enjoyment of present and future generations and for introducing S.807 to perfect the boundaries of the Cumberland Island National Seashore.

At the outset, I believe that it would be helpful to briefly review the legislative and factual history which forms the predicate for S.807.

The Cumberland Island National Seashore was created by an Act of Congress on October 23, 1972, in order to preserve for future generations the unspoiled and primitive beauty of the last remaining, undeveloped, large "Golden Isle" off the coast of Georgia. In order to effectively prevent the destruction of the natural character of Cumberland Island, the statute specifically forbade any bridge or causeway to the island. Rather, it contemplated a small embarkation point on the mainland for ferries to Cumberland Island in order to provide controlled public access.

Since the mid-1970's, such ferry service has been regularly provided by the National Park Service from the closest Georgia town, the historic town of St. Marys. The current facilities at St. Marys are adequate to embark in excess of 600 per day for Cumberland Island. The average daily use of the ferry to Cumberland for the years 1978, 1979, and 1980, did not exceed 100 persons per day. I do not believe that any substantial change has occurred in this average use in subsequent years. The City of St. Marys has agreed in writing that it will make available at no cost to the Park Service additional parking areas and other facilities in St. Marys, when, as, and if required to accommodate additional visitation volume.

The Park Service at one point contemplated an eventual abandonment of the City of St. Marys as the departure point, and the acquisition by condemnation of approximately 376 acres located on a remote peninsula to the east of the City known as "Point Peter". This change was part of an overall Park Service proposal to increase visitation to the area to 11,000 people per day with 1400 of those actually travelling to the island. As a result, some 9600 disappointed people would remain at Point Peter.

Point Peter, which is bounded on three sides by marsh lands, is presently in a virtual primitive state, having been carefully preserved by the present owners for more than 50 years. The only land access to Point Peter today is via roads from the city limits of St. Marys, along a secondary narrow paved road for approximately 1.7

miles to a tertiary hard surface, narrow road known as the "New Point Peter Road", which proceeds approximately 1.8 miles across marsh and over a narrow bridge across the North River to a dead end. From that point, there is a one-lane dirt road through forest and marsh land approximately 2.2 miles down the peninsula to Point Peter.

The sole buildings now on Point Peter are a home owned by Mrs. Jean Lucas Storey, and four small buildings associated with the house. The land is heavily wooded with live oaks and an area which was formerly open has been reforested with trees which are now over 30 feet in height.

In order to facilitate the proposed high density use of Point Peter and Cumberland Island, the Park Service sought an amendment in 1978 to the initial Cumberland authorization to expand the map delineating the Cumberland Island National Seashore so as to include Point Peter. Although no hearings were held on the matter, an omnibus Department of Interior bill passed during the 95th Congress contained language which had the effect of incorporating Point Peter within the boundaries of the Cumberland Island National Seashore.

Since that time substantial public views regarding the variety of issues relating to Cumberland Island have been received by the Park Service in connection with their preparation of a final Environmental Impact Statement and General Management Plan. Thousands of interested citizens have submitted written comments as well as oral testimony at various public hearings held on the statement and plan.

I will not attempt to recite all of the details of the considerations which have transpired over the past few years. I believe that it is fair to say, however, that almost all citizen comment opposed the high density usage contemplated by the Park Service for a variety of reasons. The professionals of the National Park Service, under the local guidance of Regional Director Bob Baker, assessed these public comments. To their credit, the Park Service agreed that the proposed increased usage would have the ultimate effect of destroying the natural character of the area, and would defeat the underlying goal of preserving Cumberland. The Park Service concluded that the type of massive visitation they had proposed was unrealistic and would have a counterproductive effect.

As a result, the Final Management Plan for Cumberland Island does not contemplate acquiring any further mainland property for use as an embarkation point. The Park Service has accordingly redrawn the map delineating the Cumberland Island National Seashore to exclude the Point Peter area. The language of S.807 would simply incorporate in the law the reference number which corresponds to this most recent map. In other words it returns the area to the status quo which prevailed prior to the 1978 amendment which included Point Peter.

During the 97th Congress Congressman Bo Ginn, who represented the district in which Cumberland Island and Point Peter are located, introduced legislation which contained a title identical to the

language of S.807. While that legislation passed the House of Representatives last year, insufficient time remained in the 97th Congress for final Senate consideration of the issue. Congressman Lindsay Thomas, the current representative from the district, has introduced legislation in the House in this Congress which is identical to S.807.

Mr. Chairman, in closing, let me again thank you, Senator Mann and Senator Mattingly for your effort in connection with this legislation. I honestly believe that all interested parties are well served by this bill. Cumberland Island will be appropriately preserved. A reasonable number of visitors will continue to be able to visit the island without endangering its primitive beauty through unreasonably high use. The City of St. Marys will continue to serve as a more than adequate embarkation point and the natural beauty of Point Peter will not fall prey to bulldozers, concrete walkways, and parking lots.

I commend this legislation to you and respectfully request you to favorably report it to the full Committee and the Senate. I am prepared to respond to any questions that you might have concerning this legislation.

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